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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

DEBORAH GORE DEAN,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent,

On Petition For a Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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1995

QUESTIONS PRESENTED

Whether convictions on multiple object conspiracy counts must be reversed where one of the objects in each of the multiple- object conspiracy counts is not a crime, where a general verdict was returned, and where it is impossible to tell on which object the jury convicted.

Whether prosecutorial misconduct requiring reversal occurred where, in closing argument, the prosecutor: 1) expressed his personal opinion, at least thirty-one times, that Petitioner lied during her testimony and the trial court emphasized to the jury that it was in fact the prosecutor's personal opinion that the defendant had lied; 2) relied on testimony that he knew or should have known was false; 3) "vouched" for government witnesses by suggesting incriminating information outside of the record; and 4) acted in a manner to prejudice the jury against Petitioner.

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PETITION FOR A WRIT OF CERTIORARI

Deborah Gore Dean ("Petitioner") petitions for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit to review the judgment affirming Petitioner's conviction.

OPINION BELOW

The judgment of the court of appeals affirming Petitioner's conviction in this case is published at 55 F.3d 640

(D.C. Cir. 1995). A-1[1]. The Order of the court of appeals denying the motion for a rehearing with a suggestion for a rehearing *en banc*, is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 26, 1995. A-23. A timely petition for rehearing with a suggestion for a rehearing *en banc* was denied on September 13, 1995. A-25. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUTES

The United States Constitution, Amendment V and the federal statutes regarding conspiracy (18 U.S.C. § 371) and false statements and concealment before a department or agency (18 U.S.C. § 1001) are reprinted in the Appendix.

STATEMENT OF THE CASE

In this case the court of appeals failed to adhere to this Court's precedent requiring the reversal of a multiple-object conspiracy conviction after determining that one of the objects of the multiple-object conspiracy is not a crime and that, because of a general verdict, it is impossible to determine whether the jury relied on that object in the conviction. The court of appeals decision also creates a conflict between it and the other Circuits.

This case also raises fundamental recurring issues concerning the denial of the Petitioner's right to due process and a fair trial. The cumulative effect of the prosecutor's

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[1] References to the Appendix in this booklet are "A" followed by the page number; thusly "A-1." References to the Trial Transcript in this booklet are "Tr"; followed by the page number; thusly "Tr. 1."

misconduct requires reversal where, in closing argument, he: 1) expressed his personal opinion, at least thirty-one times, that Petitioner lied during her testimony and the trial court emphasized to the jury that it was in fact the prosecutor's personal opinion that the Petitioner had lied; 2) relied on testimony in closing argument that he knew or should have known was false; 3) "vouched" for government witnesses by suggesting incriminating information outside of the record; and 4) acted in a manner to prejudice the jury against the Petitioner. This case provides the vehicle for this Court to define the proper latitude given a prosecutor during closing argument.

* * *

Petitioner, Deborah Gore Dean, was an employee of the Department of Housing and Urban Development (hereinafter "HUD") from 1982 to 1987. Petitioner initially supervised HUD's correspondence unit, but in July, 1984, was promoted to Executive Assistant to the Secretary. There, subject to the Secretary's supervision, she assisted him and represented him both within the Department and with Congress and constituency groups. Tr. 2186-88. In 1987, Petitioner was nominated by the President to become an Assistant Secretary of HUD. Hearings were held on her nomination by the Senate Banking Committee on August 6, 1987, but the nomination was not discharged from the committee. A-7.

The case against Petitioner, brought by an Independent Counsel (28 U.S.C. § 594), centered on Petitioner's involvement with HUD's Section 8 Moderate Rehabilitation Program ("Mod Rehab"). The program was established in 1978 to fund the improvement of marginally deteriorating rental housing and to subsidize rents of lower-income families living in those improved units. HUD was to provide funds, either directly or through public housing agencies, to upgrade

the properties. State and local public housing authorities ("PHAs") were made primarily responsible for program administration. The PHAs were charged with deciding which substandard properties qualified for funding and contracting with owners and developers to rehabilitate those properties. HUD was charged with overseeing the PHAs' administration of Mod Rehab, determining which PHAs were qualified to participate in the program, and allocating funds to qualified PHAs. A-3-4.

The indictment against Petitioner alleged that she was involved in three broad conspiracies to defraud HUD in the operation of the Mod Rehab program by assisting acquaintances to obtain Mod Rehab funding for certain projects and to make false statements.

After a jury trial (27 court days), Petitioner was convicted of three separate multiple-object conspiracies in violation of 18 U.S.C. § 371 (Counts One, Two and Three),[2] one count of accepting an illegal gratuity, four counts of perjury, and four counts (Six, Eight, Ten and Twelve) of concealment and false statements in violation of 18 U.S.C. § 1001.[3] Counts Six, Eight, Ten and Twelve (also referred to as "the substantive § 1001 counts) stem from Petitioner's testimony on August 6, 1987, before the Senate Committee on Banking, Housing, and Urban Affairs, regarding her nomination to be an Assistant Secretary at HUD.

The district court sentenced Petitioner to two concurrent terms of twenty-one months confinement on multiple-object conspiracy Counts One and Two and fined her

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[2] None of the alleged co-conspirators were charged with any crime relating to this case.

[3] The district court dismissed one of the counts brought under 18 U.S.C. § 1001.

$2,500 on each of those Counts. The court arrived at this sentence after giving Petitioner a six level upward departure. On each of the remaining Counts, the district court sentenced Petitioner to twenty-one months confinement to run concurrently with each other and with the sentence imposed on the first two multiple-object conspiracy counts.

The court of appeals reversed the conviction on one perjury count and all four substantive § 1001 counts alleging misrepresentation and concealment before Congress based on the authority of *Hubbard v. United States*, ___ U.S. ___, 115 S. Ct. 1754 (1995). The court also found evidence insufficient to support three fourths of the projects alleged in Count One and three-fifths of the projects alleged in Count Two (two of the three multiple-object conspiracy counts). Because the sentence on the remaining Counts was based on the sentences for Count One and Two, which had been narrowed considerably and five other counts which were reversed, the court of appeals vacated the sentences on all counts and remanded the case for resentencing. The court also suggested that the upward departure was not appropriate. A-20-22.

The Court of Appeals, however, refused to vacate all convictions based on the prosecutor's misconduct, especially during closing arguments.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS' FAILURE TO REVERSE THE MULTIPLE-OBJECT CONSPIRACY COUNTS IS IN CONFLICT WITH THIS COURT'S PRECEDENT AND CREATES A CONFLICT AMONG THE CIRCUITS.

A. *Yates v. United States* Requires Reversal Of Multiple-Object Conspiracy Counts One, Two And Three.

After oral argument of this case before the court of appeals, this Court decided *Hubbard v. United States*, ___ U.S. ___, 115 S. Ct. 1754 (1995) which narrowed the reach of 18 U.S.C. § 1001 to matters within the Executive Branch. Based on *Hubbard* the court of appeals correctly reversed Petitioner's convictions on the substantive § 1001 counts (Counts Six, Eight, Ten and Twelve) for alleged misrepresentations before the Senate Banking Committee on August 6, 1987. A-11-12.

In the rehearing petition, Petitioner argued that since *Hubbard* also made the § 1001 objects in multiple-object conspiracy counts (Counts One, Two and Three) no longer a crime and the jury may have relied on that object in returning a general verdict, the convictions on those counts must be reversed and remanded for a new trial. The court of appeal's refusal to do so was contrary to *Yates v. United States*, 354 U.S. 298 (1957).

Yates requires a reversal and remand for a new trial where, as in this case, one of the objects of a multiple-object conspiracy count is legally inadequate -- *i.e.*, not a crime -- and where the jury could have relied on that object in a general verdict. In *Yates*, the defendants were convicted of a

multiple-object conspiracy in violation of Title 18 U.S.C. § 371: (1) to advocate and teach the duty and necessity of overthrowing the U.S. Government by force and violence; and (2) to organize as the Communist Party. This Court found with regard to "organizing" that the three-year statute of limitations had run and required the withdrawal of that part of the indictment from the jury's consideration. This Court held that in circumstances where "the verdict is supportable on one ground but not on another, and it is impossible to tell [on] which ground the jury selected" the conviction must be set aside. *Id.* at 312. *See also, Bachellar v. Maryland*, 397 U.S. 564, 571 (1970); *Leary v. United States*, 395 U.S. 6, 30-32 (1969).

This case is identical to *Yates*. First, Counts One, Two and Three each charge a multiple-object conspiracy where one object is legally insufficient -- not a crime. Second, a general verdict was rendered making it impossible to determine whether the jury found the Petitioner guilty of these counts based solely on the § 1001 object.

1. One Of The Objects In Each Multiple-Object Conspiracy Is Legally Insufficient -- Not A Crime.

Each of the multiple-object conspiracy counts alleges a violation of 18 U.S.C. § 1001 as one of its objects:

> to commit offenses against the United States, to wit, the defendant DEBORAH GORE DEAN, in matters within the jurisdiction of a department and agency of the United States, would knowingly and willfully falsify, conceal, and cover up material facts, by a trick, scheme and device, in violation of Title 18, United States Code, Section 1001.

Superseding Indictment, Count I, A-28-29, ¶1(C); Count II, A-42, ¶1(C); Count III, A-56, ¶1(C) (ii).

Although the § 1001 object does not specify the government agency to which the concealment and misrepresentation were made, the only overt act charged in each of the multiple-object conspiracy counts that can be construed to support the § 1001 object identifies only the Senate Banking Committee:

> In the course of the August 6, 1987 confirmation hearing about the defendant DEBORAH GORE DEAN before the Senate Banking Committee, . . .testified . . ."*goes solely on information provided by the Assistant* . . . that she had "never given or approved or pushed or coerced anyone to help any developer," and that "*[i]t's a tremendous waste of time*" . . . .

Indictment Count 1, A-41, ¶88 (emphasis added); Count II, A-54-55, ¶107-108; and A-64 Count III, ¶65. *See also* A-40-41 Count I, JA 58, ¶87; A-54-55 Count II, JA 77, ¶107; A-64 Count III, JA 89, ¶64.

Moreover, this overt act mirrors the allegations of the substantive § 1001 counts (Counts Six, Eight, Ten and Twelve) on which the jury convicted and which were reversed by the court of appeals on the basis of *Hubbard*. Compare, for example:

COUNT SIX
Scheme to Falsify, Conceal and Cover Up

* * *

2. On or about August 6, 1987, . . . the defendant DEBORAH GORE DEAN, *in a matter within the jurisdiction of a department of the United States, to wit, the Senate Banking Committee, knowingly and willfully falsified, concealed and covered up by a trick, scheme and device material facts* she had a duty to disclose, as hereinafter set forth. (emphasis added)

3. On or about August 6, 1987, defendant DEBORAH GORE DEAN testified under oath before the Senate Banking Committee.

* * *

6. . . . [T]he defendant DEBORAH GORE DEAN willfully and contrary to the oath she had taken to testify truthfully, testified under oath as follows, believing and knowing the underscored material statement not to be true:

* * *

> "Once again, they bring it to a panel of people, which is the Under Secretary, the executive assistant to the Secretary and the Federal Housing Commissioner. *That panel goes solely on information provided by the Assistant Secretary for Housing.* He gives us the information and the three of us make recommendations to the Secretary, who is the person who approves those units." (emphasis in original)

A-65-66.

COUNT EIGHT
Scheme to Falsify, Conceal and Cover Up

* * *

2. On or about August 6, 1987, . . . the defendant DEBORAH GORE DEAN, *in a matter within the jurisdiction of a department of the United States, to wit, the Senate Banking Committee, knowingly and willfully falsified, concealed and covered up by a trick, scheme and device material facts* she had a duty to disclose, as hereinafter set forth. (emphasis added).

3. On or about August 6, 1987, the defendant DEBORAH GORE DEAN testified under oath before the Senate Banking Committee.

* * *

6. The defendant DEBORAH GORE DEAN had a duty to answer. . .

> truthfully and to disclose how HUD's Mod Rehab program had been and was being administered and what role she played in the administration of that Program.

7. . . . [T]he defendant DEBORAH GORE DEAN testified as follows:

> "I have *never given or approved or pushed or coerced anyone to help any developer*. Those funds go directly to

> the public housing authority." (emphasis in original).
>
> * * *
>
> "*It's a tremendous waste of time*, and I let them know that; because those funds go to the public housing authorities." (emphasis in original)

8. In fact and in truth, as the defendant DEBORAH GORE DEAN then and there well know, the statements set forth in the preceding paragraph were knowingly and willfully made as, and pursuant to, a trick, scheme and device to falsify, conceal and cover up material facts, to wit, the actual manner in which Mod Rehab funding decisions were made, and her actual role with regard to those funding decisions.

* * *

A-66-68, Count VIII.

The portions of Counts Six and Eight which are underscored are identical to the charging allegations of the § 1001 object in the multiple-object conspiracy counts and the overt act in each count alleging testimony before the Senate Banking Committee.

2. It Is Impossible To Determine Whether The Jury Found The Petitioner Guilty Based On The § 1001 Object.

The jury returned a general verdict finding Petitioner guilty of the multiple-object conspiracy counts. Because it was a general verdict, it is impossible to determine whether

the jury convicted Petitioner of the multiple-object conspiracy counts based on the § 1001 object. There is a likelihood, however, that it did so.[4] First, the jury convicted Petitioner on the substantive § 1001 counts (Counts Six, Eight, Ten and Twelve) which alleged concealment and false testimony before the Senate Banking Committee on August 6, 1987. The language of the substantive § 1001 counts mirrors the language in the § 1001 counts. Second, the district court instructed the jury to convict on the multiple-object conspiracy counts if they found that the Petitioner (or any of the co-conspirators) committed *any* overt act in furtherance of *any one* of the objects. A-145, Tr. 3551, 3557, 3558.[5] The jury received a copy of these instructions.

B. The Court Of Appeals' Failure To Reverse The Multiple-Object Conspiracy Counts Creates A Conflict Among the Circuits.

The court of appeals' failure to reverse the multiple-object conspiracy counts in accordance with *Yates* creates a conflict with the other Circuits, including the First, Second, Fourth, Fifth, Seventh and Ninth. For example, in *United States v. De Luca,* 692 F.2d 1277 (9th Cir. 1982), a defendant was convicted of violating Title 18 U.S.C. § 844(i), which proscribes the destruction of a building "by means of an explosive." *Id.* at 1280. The court reversed the conviction on the substantive count based upon an earlier interpretation of § 844(i) that the fire charged was not an explosive within the meaning of 18 U.S.C. § 844(i). The court also reversed the conviction on the multiple-object conspiracy count because

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[4] Of course, the defendant is not required to make a showing of likelihood. *See* discussion of *Yates supra.*

[5] The court of appeals affirmed the conviction on Count Seven (perjury) because the "government establish[ed] that Dean participated in three conspiracies." *Dean*, 55 F.3rd at 660. Because the conspiracy convictions must be reversed, Count Seven must also be reversed.

one of the three objects was a violation of § 844(i). The court held that the conviction must be reversed and remanded because one object in a multiple-object conspiracy count was not a crime and because the judge instructed the jury that it need find only one of the objects. *Id.* at 1281, *citing, United States v. Carman*, 577 F.2d 556, 567 (9th Cir. 1978). The court focused on the fact that because the judge instructed the jury that it "need not find that the conspiracy existed to commit all three criminal activities" it was "impossible to know what the jury considered." *Id.*

In *United States v. Head*, 641 F.2d 174, 179 *cert. denied* 462 U.S. 1132 (1983) (4th Cir. 1981), the defendant was convicted of a multiple-object conspiracy to achieve three illegal objects. When, on appeal, it was determined that two of the three objects of the conspiracy were not crimes (the limitations period had run), the court held that it "was required to reverse where a general jury verdict renders it impossible to say whether a defendant was convicted under an erroneous or a valid view of the law." *Id.* In *Head* there was "no way of knowing whether Head was convicted for an offense barred by limitations." *See also, United States v. Marcello*, 876 F.2d 1147, 1152-53 (5th Cir. 1989); *United States v. Ruggiero*, 726 F.2d 913, 920 (2d Cir.), *cert. denied, Rabito v. United States*, 469 U.S. 831 (1984); *United States v. Kavazanjian*, 623 F.2d 730, 739-740 (1st Cir. 1980) (reversing on two substantive counts for failing to state a crime and reversing the multiple-object conspiracy count where two objects mirrored the substantive counts and it was impossible to tell whether the jury found the defendant guilty of conspiracy based on either of the two reversed substantive objects); *Carman*, 577 F.2d at 567 (holding that multiple-object conspiracy conviction must be reversed where one substantive count conviction was reversed on appeal for failure to state a crime and an object of the conspiracy mirrored the substantive count); *United States v. Baranski*, 484 F.2d 556, 560-561 (7th Cir. 1973) (reversing substantive

count found to be in violation of first amendment and multiple-object conspiracy count where object of the conspiracy mirrored the substantive count).

II. THE COURT OF APPEALS' FAILURE TO REVERSE THE CONVICTIONS BECAUSE OF THE CUMULATIVE EFFECT OF THE PROSECUTOR'S MISCONDUCT VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS AND IS IN CONFLICT WITH THIS COURT'S PRECEDENT.

The prosecutor's misconduct violated Petitioner's constitutional right to due process and a fair trial. The misconduct was not "slight or confined to a single instance, but . . . was pronounced and persistent, with a probable cumulative effect upon the jury which cannot be disregarded as inconsequential." *Berger v. United States*, 295 U.S. 78, 89 (1935). The pervasive nature of the misconduct is evident throughout the transcript and constitutes a persistent, calculated and sustained attempt to inflame the jury.[6]

During the hearing on Petitioner's motion for a new trial, the district court specifically recognized that misconduct was pervasive, noting, *inter alia:*

> It evidences to me in the Independent Counsel's Office, where there were *Brady* requests made a long time ago, statements that

---

[6] It is well-established that even if individual acts of prosecutorial misconduct do not rise to the level of reversible error, the cumulative effect can be so prejudicial that reversal is required. *E.g., United States v. Tory*, 52 F.3d 207 (9th Cir. 1995); *United States v. Parker*, 997 F.2d 219 (6th Cir. 1993); *United States v. Kerr*, 981 F.2d 1050 (9th Cir. 1992); *United States v. North*, 910 F.2d 843 (D.C. Cir. 1990), *cert. denied*, 500 U.S. 941 (1991); *United States v. Dwyer*, 843 F.2d 60 (1st Cir. 1988).

> there were no *Brady* materials, which is obviously inaccurate, where these witnesses are put on that I've just reviewed, where there was substantial questions and information that they may not have been telling the truth in the prosecution's files or the prosecution didn't ask if they were telling the truth to make sure they were before they went on stand, it evidences to me a zealousness that is not worthy of prosecutors in the federal government or Justice Department standards of prosecutors I'm very familiar with, and that concerns the Court and is not the first time I've seen it in Independent Counsel cases.

A-152. Even without consideration of the inflammatory closing argument, the court several times noted the extreme difficulty of evaluating the cumulative effect, noting, *inter alia*, that "it's almost impossible to quantify the total impact of various areas the Court has identified." A-154.

A. The Prosecutor Improperly Expressed His Opinion In Closing Argument That Petitioner Had Lied.

The prosecutor expressed his personal opinion, at least thirty-one times, during closing argument that Petitioner had lied.[7] A-15-16. Among the statements were:

> Based on her lies, you should throw out her entire testimony. Her six days of testimony is worth nothing. You can throw it out the

---

[7] This number does not include the fifteen or more times the prosecutor used the words "lied," "lies," or "lying," when accusing the Petitioner of falsely accusing other persons of lying or fabricating. *See* A-108-09, 124-25.

> window into the garbage pail for what it's worth, for having lied to you. A-115-116.

Other statements made during the prosecutor's closing argument included: "It was a lie." A-114-115; "It was a lie, ladies and gentlemen, out and out, right in front of you." A-115; "It was filtered with lies" A-115-116; "Then Miss Dean lied." A- 116-117; "She lies when it benefits her ... she lies about that ... if she's going to lie on that will she lie on anything else." A-117-118; "The reason it's so clear why she would lie that Mr. Reynolds did not drive her to lunch with John Mitchell...." A-118-119; "That's false. That's a lie.... It was just another lie"; "Her entire testimony if fraught with lies and deception. It cannot be believed." A-120-121; "And probably the biggest lie of all ..." A-121-122; "Just as she's deceived you, or attempted to do so, ladies and gentlemen ..." A-124; "No hole bigger than the absolute lie about the apartment." A-124; "She has taken the initiative from the get-go. She has lied to this court, to this jury. Do not believe what she says." A-125.

The prosecutor suggested that the Petitioner had falsely accused others of lying, including Thomas T. Demery. After reciting a list of such persons, the prosecutor concluded the initial part of the closing argument as follows:

> But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It doesn't square with common sense. It is lies piled upon lies. It crumbles to pieces the minute you look at it.
>
> Now, I know I've gone on a long time. I apologize for that. But in representing the Government I do need to bring out all the facts. I'd ask you when [defense counsel] gives

> his closing argument to be as attentive to him as you were to me and I will have an opportunity to talk to you again, but throughout that listen and wonder why she lied to you throughout her testimony.

A-125.

During rebuttal on the following day, the prosecutor continued the attack on Petitioner using the words "lie," "lies," or "lied" 18 times. At the beginning of the rebuttal, the prosecutor stated:

> I told you during closing argument that Miss Dean lied to you very clearly and that she lied to you a series of times thereafter and, I repeat, you can take her testimony and throw it in the garbage where it belongs because someone --

A-128.

The defense objected twice to this characterization of lying in the rebuttal argument and was overruled. In overruling the objection the court stated, "overruled . . . [I]t's closing argument." A-127-128, 132. With this statement, the court added its imprimatur to the appropriateness of the prosecutor's argument. *See United States v. Manning*, 23 F.3d 570, 575 (1st Cir. 1994).

After the defense objection was overruled, the prosecutor continued:

> Since [defense counsel] kept saying that it was not garbage, that I should not have said that, I'm saying that's where it belongs, in

> the garbage. Because it was a lie ladies and gentlemen.

A-128.

Other statements made in rebuttal included: "Unequivocal proof that Ms. Dean lied." A-129; "They were lies, ladies and gentlemen. Lies, blatant attempts to cover up what occurred, to sway you." A-132; "So you as the jury can throw her testimony in the garbage." A-133; ... a series of misstatements, of falsehoods, of lies." A-134; "They unequivocally show that she lied to you, ladies and gentlemen, on the stand, under oath..." A-135; "... [S]he lied about it." A-140; "then lied and covered up and concealed" A-143.

None of the prosecutor's statements alleging that Petitioner had lied were directed to the Petitioner's testimony underlying the perjury and concealment counts in the indictment.[8] Rather, after briefly discussing the first perjury count, the prosecutor asserted:

> There are four separate counts of perjury, four separate counts of concealment. There is no sense going into all of them because the Government contends that each of those was

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[8] Following the initial part of the prosecutor's closing, the court called counsel to the bench to advise the prosecutor that he had not addressed the perjury counts and might be precluded from doing so in rebuttal. A-125-126. The prosecutor stated that he discussed the perjury counts at the beginning of the argument ("They're all just lies" A-126), apparently referring to the place where he had initially summarized all twelve counts. At that point, the prosecutor quoted each at-issue statement, thereafter stating: "We've proven that's false." "Again, we've proven it is false." "Again, that was false." A-81-82.

> a lie and a misstatement in much the manner as you've seen during the course of this trial.

A-138.

The prosecutor's statements that the Petitioner had lied were in the form of affirmations. In no case, except for that quoted immediately above, was one of the prosecutor's statements prefaced by "the government [or the prosecution/I/we] submits/maintains/contends," or words to similar effect. Further, as shown in Section B, in many instances where the prosecutor asserted that the defendant lied, he knew that she was not lying.[9]

While a prosecutor may characterize a defendant as a liar, the terms "fabricated" or "lies" may not be used repeatedly to the point of excessiveness. *United States v. Chaimson*, 760 F.2d 798, 811 (7th Cir. 1985); *Stewart v. United States*, 247 F.2d 42, 46-47 (D.C. Cir. 1957). The prosecution's attack on the Petitioner's credibility was far more pervasive and virulent than in any federal reported case located by Petitioner. The cases cited by the court of appeals in support of its decision illustrate the difference. A-18-19. Those cases involved, at most, several remarks, which "were neither persistent nor pronounced" and have little bearing on the facts of this case. *Bradford v. Whitley*, 953 F.2d 1008, 1013 (5th Cir), *cert. denied*, 113 S. Ct. 91 (1992).

The prosecutor's conduct is in direct violation of *United States v. Young*, 470 U.S. 1, 18-19 (1985). In *Young*, this Court recognized that this type of misconduct undermines the fairness of the trial and contributes to a miscarriage of justice, requiring reversal. This conduct is especially egre-

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[9] A prosecutor's statements that a defendant has lied must be fully supported by the evidence. *See e.g., Stewart v. United States*, 247 F.2d 42, 46 (D.C. Cir 1957).

gious because a "prosecutor's opinion carries with it the imprimatur of the government and induces the jury to trust the government's judgment rather than its own view of the case." *Id. See also Stewart*, 247 F.2d at 46-47.

The court of appeals and the trial court recognized -- the court of appeals somewhat grudgingly and the district court quite affirmatively -- that the statements would be perceived as the opinion of counsel. The court of appeals acknowledged that certain remarks by the prosecutor may have "spilled over into expressions of personal belief, or may have been so perceived by the jurors," citing the prosecutor's statement, "She's the only one we know who definitively did lie." A-18. The district court, on the other hand, made clear that it perceived the remarks as the personal opinion of counsel and attempted a curative instruction:

> ... and it is not the opinion of counsel, that is, whatever their personal belief is, that is appropriate, so that an argument to you that someone is lying *is really an expression of personal opinion by the attorney*, as opposed to pointing you to the evidence and saying it's for you to make up your mind whether or not someone is telling the truth. [Emphasis added.]

The district court's instruction exacerbated the prejudicial effect of the prosecutor's misconduct because, had the court been silent, the jury would have been left wondering whether the prosecutor was giving his true opinion. *Cf. Harris v. United States*, 402 F.2d 656, 658 (D.C. Cir. 1968). Instead, the instruction communicated to the jurors that, in the trial judge's view, the statements that the Petitioner had lied in fact reflected the personal opinion of the prosecutor.

Moreover, the timing of the court's statement exacerbated the effect of the prosecutor's misconduct, when it came:

- two days and two nights after the prosecutor began closing argument giving the jurors plenty of time to consider the repeated remarks that appeared to be the personal opinion of the prosecutor, before being informed by the court that the remarks did in fact reflect the prosecutor's personal opinion, but that the jury should nevertheless use its own judgment;

- one day after the court overruled defense objections during the prosecutor's rebuttal argument and thereby validating in the minds of the jurors the appropriateness of the argument. *Manning*, 23 F.3d at 575; and

- one day after the court instructed the jury on the merits A-147. The instructions made no reference to the inappropriateness of the prosecutor's comments, but instead noted that the "statements of counsel are only intended to assist you in the understanding of the evidence." Tr. 3533.

Contrary to the court of appeals' opinion, the trial court's instruction was not "curative."

B. The Prosecutor Relied On Evidence He Knew Or Should Have Known Was False In Closing Argument.

The prosecutor also relied on testimony in closing argument that he knew or should have known was false. In fact, the district court specifically found that two key government witnesses -- Thomas T. Demery and Ronald L. Reynolds -- had given testimony that the government knew to be false. The court did not address whether the false

testimony could have affected the judgment of the jury. A-149-52. The court of appeals also did not address the effects of the misconduct. *See* A-149-156. Where, as in this case, there is a "reasonable likelihood that the false testimony could have affected the judgment of the jury" the convictions must be reversed. *United States v. Agurs*, 427 U.S. 97, 103 (1978); *United States v. White*, 972 F.2d 16, 21 (2d Cir.), *cert. denied*, 113 S. Ct. 669 (1992).

1. Thomas T. Demery.

On cross-examination, Thomas T. Demery repeatedly denied ever having lied while testifying under oath before Congress. Tr. 1915. The prosecutor knew that this statement was false. In fact, the government charged Demery with two counts of perjury, and, in the course of negotiating a plea agreement that did not include perjury charges, Demery admitted that he had lied to Congress. A-157-58. Dean's Motion for Judgment of Acquittal and for a New Trial, Ex UU at 3-4, 7-8 (Nov. 30, 1993). The plea did not include perjury charges, in part, because such a plea could greatly damage Demery's credibility if he were ultimately called as a witness at Petitioner's trial -- which he was.

Even though the prosecutor knew that Demery's statement was a lie, he did not correct the testimony on redirect. Instead, he utilized the testimony to contradict the Petitioner's testimony that it was Demery who had brought a Dade County funding request to her attention and not -- as Demery testified -- she who brought it to his attention in the spring of 1987 (an issue of contention on Counts Three and Four). Tr. 2573-2576. Further, despite knowing that the government's own witness Demery had lied, the prosecutor stated that Petitioner falsely accused Demery of lying, immediately thereafter adding: "[Petitioner] is the only one we know who definitively did lie." A-18.

The jury certainly would have been less likely to believe Demery's testimony if it had known that he previously lied to Congress and that he lied to the jury just minutes before testifying about the Dade County funding request.

2. Ronald L. Reynolds.

The district court also recognized that the prosecutor knew that Ronald L. Reynolds, a HUD driver who testified about driving Petitioner to lunches where she met with John Mitchell, would not be a truthful witness prior to putting him on the stand (*e.g.*, the government possessed calendars and other evidence indicating that his testimony could not be true). A-151. The prosecutor nevertheless utilized Reynolds' testimony to suggest that Petitioner lied to the jury about John Mitchell. In closing argument, the prosecutor devoted almost three full pages of transcript to a discussion of Reynolds in this regard and used the word "lie" or "lied" six times. A-117-120.[10] Again, in rebuttal, the prosecutor devoted two paragraphs to the discussion of Reynolds, asserting that his testimony had shown that Petitioner had lied, and used the word "lie" or "lied" three times. A-131. This is incredible when the prosecutor himself thought Reynolds "was a weird guy and couldn't be believed." Tr. 3224.

Yet, the prosecutor had a strong basis for knowing that in fact it was his own witness Reynolds who was lying, but nevertheless relied on Reynolds' testimony to assert that Petitioner had lied.

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[10] That discussion was further emphasized when the prosecutor put a motor pool log on a visual presenter to suggest to the jury that, contrary to Dean's testimony, Reynolds was frequently Dean's driver, noting to the jury that Reynolds' name, "as you'll see, runs throughout." A-119. The exhibit in fact demonstrated only that while Reynolds often drove various HUD personnel in October 1986, he drove Dean on only one occasion. Tr. 943-947.

3. The Sankin Receipts.

Sankin was a consultant with whom the Petitioner had a business (he managed an apartment building belonging to the Petitioner's mother), as well as a personal relationship. On several occasions, while Petitioner was at HUD, they had lunch together and occasionally paid for each others meals. During Sankin's testimony, the prosecutor showed Sankin a series of credit card receipts with certain notations on them. Although the prosecutor admitted that he "specifically refused" to question Sankin pre-trial about which receipts (Tr. 1200), if any, pertained to Petitioner -- incredibly claiming he had no obligation to determine whether they actually pertained to Petitioner (Tr. 1204) -- he introduced all of the receipts as evidence that Sankin was "wining and dining" the Petitioner and "buying her gifts." Tr. 1134-1153.

During a court break taken at the conclusion of Sankin's direct testimony, Sankin informed the prosecutor that certain of the receipts did not in fact pertain to the Petitioner. Despite this knowledge, the prosecutor failed to bring Sankin's statement to the attention of the court or defense counsel. The prosecutor also had documents (*e.g.*, Petitioner's calendars) which showed that some of the receipts could not have related to Petitioner.[11] The prosecutor made no effort to correct the record. In closing argument, the prosecutor relied on all of the receipts, even those he knew did not pertain to Petitioner.

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[11] In fact, all four receipts that mention Dean or her title and the discussion of mod rehab (GX 11j, 11l, 11m, 11u) are inconsistent with Dean's calendars. GX 6, 7, 8. Two of these (GX 11l, 11u) are also contradicted by Dean's testimony, supported by her calendars, that she was at the Preakness or in the middle of long period of convalescence from a case of meningitis on the days in question. Tr. 2707, 2722.

During the hearing on Petitioner's motion for a new trial, the district court chastised the prosecutor for his conduct as "not worthy of prosecutors in the federal government." A-150-153.

C. The Prosecutor Improperly Vouched For Government Witnesses And Suggested Incriminating Information Outside Of The Record.

In addition to repeatedly asserting, in an inflammatory manner, that Petitioner had lied to the jury, the prosecutor improperly "vouched" for government witnesses and suggested incriminating information outside the record, contrary to *Young, supra*. *See, e.g., Hall v. United States*, 419 F.2d 582, 585 (5th Cir. 1969). The prosecutor stated for example:

> But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It doesn't square with common sense. It is lies piled upon lies. It crumbles to pieces the minute you look at it.

A-125.

And though there was no testimony that Petitioner had ever misled HUD Secretary Pierce, who was not called to testify, the prosecutor stated:

> Just as she's deceived you or attempted to do so, ladies and gentlemen, through a series of lies and deceptions, she misled Samuel Pierce and didn't tell him of her hidden interest because if this man who she said is such a fine man and prominent attorney, would have

> allowed her to do this where she would have had a hidden interest on these projects?

A-123-124.

D. The Prosecutor Acted In A Manner To Prejudice The Jury Against The Petitioner.

During the trial, the prosecutor acted in a manner to prejudice the jury against Petitioner. *E.g.,* Tr. 2592-94; 2776-77; 2786-87, 2900-01. *United States v. Perholtz*, 842 F.2d 343, 361 (D.C. Cir.), *cert. denied*, 488 U.S. 821 (1988).

For example, twice during the Petitioner's direct examination, the lead prosecutor stood up to make what the court would term "smart comments," and during cross-examination the prosecutor made remarks after Dean had answered. The district court was forced to chastise the prosecutor on several occasions for this behavior:

> (Bench conference on the record)
>
> THE COURT: Mr. O'Neill, let me ask you if that had been a black defendant on the stand with a white jury, would you be making the same kind of smart comments you've been making with a white defendant and a black jury?
>
> [PROSECUTOR]: Do you think I'm making those racially?
>
> THE COURT: No, what I'm impugning is that you're making these comments with a white defendant and a black jury which you wouldn't be doing with a black defendant and a white jury, and I resent that. I

think it may be a basis eventually for the bench to take a look at this case.

[PROSECUTOR]: Your Honor, if I may, I understand what your concerns are. That happened numerous times in the government's case, numerous times, and the record will reflect that. It happened one time now after the questioned was asked and answered, asked and answered.

THE COURT: This is the third time I recall you doing this, and I've warned you before, all right?

[PROSECUTOR]: Second time, Judge. I don't want to -

THE COURT: Second or third.

[PROSECUTOR]: I don't want to quibble. All right.

A-77.

Thus, the district court indicated that it believed that the prosecutor behaved in this manner because the Petitioner was a prominent Caucasian being tried before a jury composed entirely of African Americans, and that the prosecutor was trying to improperly influence the jury. A-73-75, 76, 77, 78-79, Tr. 2786-2787. On several occasions the prosecutor focused on undisputed matters apparently with this same improper motive. For example, during cross-examination, the prosecutor questioned Petitioner as to whether she informed special agent Al Cain, FBI, while being questioned by him, that Lance Wilson was responsible for approving certain Mod Rehab units. Wilson was Petitioner's predecessor and friend. He is also an African American. Petitioner testified that she may have told Cain that Wilson

was involved in the transaction. During rebuttal the prosecutor called special agent Cain to confirm that Petitioner had told him that Wilson was involved with the project. The prosecutor used this information in closing argument to make the point that Petitioner "fingered Lance Wilson, her friend" to alienate the Petitioner from the jury. Likewise, the Prosecutor argued without any evidence to support the argument that Petitioner mislead Secretary Pierce, as another effort to alienate the jury. See Section C. The prosecutor's conduct was calculated to cause the jury to reach conclusions on the basis of considerations apart from whether or not the defendant had been guilty of the specific crimes charges. *See Young*, 470 U.S. at 17; *Manning*, 23 F.3d at 573; *United States v. Monaghan*, 741 F.2d 1434, 1441 (D.C. Cir. 1984), *cert. denied*, 470 U.S. 1085 (1985).

E. The Evidence Against Petitioner Was Weak.

Relevant to the analysis of whether the prosecutor's misconduct amounts to prejudicial error is the relative strength of the government's evidence. *Manning*, 23 F.3d at 574; *United States v. Jones*, 482 F.2d 747, 754 (D.C. Cir. 1973). Here, the weakness of the government's case was established by the court of appeals. Specifically, the court concluded that there was insufficient evidence to sustain a conspiracy as to three-fourths of the projects charged in Count One and as to three-fifths of the projects charged in Count Two; and 2) that no reasonable jury could find petitioner guilty of Count Eleven. Similarly, the trial court in denying the judgment for acquittal and motion for a new trial (2/14/93 Tr. 5), and in deferring execution of the sentence (2/26/93 Tr. 33) noted that the evidence was weak.[12] Thus,

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[12] No direct or circumstantial evidence was presented at trial that petitioner participated in a conspiracy to "impair, obstruct or defraud" the lawful function of a government agency or had the requisite *mens rea*.

(continued...)

there is much reason to believe that there would have been a different outcome but for the prosecutor's misconduct.

III. CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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December 12, 1995

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[12](...continued)
There was no evidence that any Mod Rehab project funded was unworthy of funding or that any worthier projects were not funded because those of Dean's acquaintances were, or that projects funded were done so only because of Dean's involvement. The evidence on all counts was at best marginal.

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

DEBORAH GORE DEAN,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued November 15, 1994
Decided May 26, 1995

No. 94-3021

UNITED STATES OF AMERICA,

Appellee,

v.

DEBORAH GORE DEAN,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
(92cr00181)

Before: WALD, SILBERMAN, and RANDOLPH, Circuit Judges.

Opinion for the court filed by the *Circuit Judge* Randolph.

[p. 2]

Randolph, *Circuit Judge*: A jury convicted Deborah Gore Dean, a former employee of the Department of Housing and Urban Development, of three counts of conspiracy to defraud the federal government, one count of having accepted an illegal gratuity, four counts of perjury, and four counts of engaging in a scheme to conceal material facts. The district court sentenced Dean to two concurrent terms of twenty-one months' confinement on the first two conspiracy counts and fined Dean $2,500 on each of those counts. On each of the

remaining counts, the court sentenced Dean to twenty-one months' confinement, to run concurrently with each other and with the sentences imposed under the first two conspiracy counts. On appeal, Dean maintains that the evidence presented at trial was insufficient to support her conviction; that the trial court erred in quashing subpoenas she served on a Senator and a Senate committee investigator: that the government engaged in prosecutorial misconduct, depriving her of a fair trial; and that the trial court improperly sentenced her.

In the spring of 1989, the Inspector General of the Department of Housing and Urban Development reported apparent mismanagement of a HUD program aimed at upgrading substandard housing for low-income tenants. OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AUDIT OF SECTION 8 MODERATE REHABILITATION PROGRAM (Apr. 26, 1989) [hereinafter OIG AUDIT REPORT]. According to the Inspector General, top Department officials had from 1984 to 1989, allocated hundreds of millions of dollars of program funds on an informal, undocumented and discretionary basis. *Id.* at 5. Ignoring regulations that should have governed their funding decisions, the officials directed funds to favored developers, many of whom had connections to the Department. *Id.* at 5-9. A subcommittee of the House Committee on Government Operations **[p. 3]** investigated further. HOUSE COMM. ON GOVERNMENT OPERATIONS, ABUSE AND MISMANAGEMENT AT HUD: TWENTY-FOURTH REPORT, H.R. Doc. No. 977, 101st Cong., 2d Sess. (1990) [hereinafter HOUSE REPORT]. The subcommittee reported that, largely because of its administration of this program, the Department had become "synonymous with rampant abuse, favoritism, and mismanagement." *Id.* at 111. The subcommittee identified Deborah Gore Dean -- a prominent

Department official -- as a "key player" in the Department's "giveaway game." *Id.* at 4.

On July 7, 1992, a grand jury returned a thirteen-count indictment against Dean. The indictment charged Dean with three counts of conspiracy in violation of 18 U.S.C. § 371, one count of accepting an illegal gratuity in violation of 18 U.S.C. § 201(c)(1)(B), four counts of perjury in violation of 18 U.S.C. § 1621, five counts of perjury in violation of 18 U.S.C. § 1621, and five counts of concealment and false statements in violation of 18 U.S.C. § 1001. The district court dismissed one of the counts brought under 18 U.S.C. § 1001. On October 26, 1993, a jury found Dean guilty of the twelve remaining counts.

The case against Dean brought by an Independent Counsel, 28, U.S.C. § 594, centered on Dean's actions as an administrator of the Department's Section 8 Moderate Rehabilitation Program. Established in 1978, the program funded the upgrading of marginally deteriorated rental housing, and subsidized rents of lower-income families living in the improved units. To this end, Congress authorized the Department to pay owner of substandard housing, either directly or through public housing agencies, to upgrade their properties. Act of Oct. 31, 1978, Pub. L. No. 95-557, § 206(e), 92 Stat. 2080, 2092. Regulations governing the program, published in 1979 and first revised in 1982, made state and local public housing authorities primarily responsible for program administration. After deciding which substandard properties qualified for funding, 24 C.F.R. §§ 882.503-882.504 (1982), public housing authorities contracted with owners and developers to rehabilitate the properties. 24 C.F.R. § 882.505 (1982). For owners and developers of adequately upgraded properties, 24 C.F.R. § 882.506 (1982), additional contracts guaranteed a **[p. 4]** fifteen-year stream of

rental subsidies.[1] 24 C.F.R. §§ 882.403(c), 882.409 (1982). Under the regulations, the Department oversaw public housing authorities' administration of the Moderate Rehabilitation Program. The Department determined which public housing authorities were qualified to participate in the program, 24 C.F.R. § 882.501 (1982), and allocated funds to qualified public housing authorities under one-year contracts, 24 C.F.R. §§ 882.403, 882.501 (1982).

Problems with administration of the program began in 1984 when Congress altered the way in which the Department allocated funds to public housing authorities. HOUSE REPORT at 10. Before 1984, the Department distributed program funds to housing authorities based on a congressionally-mandated "fair share" formula. Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 213(d)(1), 88 Stat. 633, 675. Under this formula, the amount of money a state received from the Department depended on its population, poverty, housing overcrowding, housing vacancies, the amount of substandard housing, and other criteria. HOUSE REPORT at 10. In 1984, at the Department's request, Congress waived the fair share funding requirement. Act of Nov. 30, 1983, Pub. L. No. 98-181, § 201(a)(2), 97 Stat. 1153, 1176; HOUSE REPORT at 10. Although this meant that the Department no longer had to allocate funds on a geographically-mandated basis, it did not leave Moderate Rehabilitation Program funding decisions utterly up to the discretion of Department officials. HOUSE REPORT at 10. Rather, Congress instructed the Secretary of Housing and Urban Development to develop a formula to guide Department funding decisions, based on "the relative

---

[1] Public housing authorities were also responsible for ensuring that rehabilitated properties were properly maintained, 24 C.F.R. § 882.516 (1982), and for administering the selection of lower-income families to live in the properties, 24 C.F.R. §§ 882.513-882.515 (1982).

needs of different States ... as reflected in data as to population, poverty, housing [p. 5] over-crowding, housing vacancies, amount of substandard housing ...." Act of Nov. 20, 1983, Pub. L. No. 98-181, § 201(a)(2), 97 Stat. 1153, 1176.

In 1984, when Congress waived the fair share funding requirement, Department regulations required allocation of moderate rehabilitation funding among public housing authorities based on an assessment of which housing authorities' applications had the best combination of five criteria.[2] 24 C.F.R. § 882.501 (1984). Nothing in Congress' waiver of the fair share funding requirement indicated that the regulation was to be repealed. Nor did the Department publish a notice suspending the regulation in the Federal Register. HOUSE REPORT at 12. Nevertheless, from 1984 through May 1988, Department officials did not allocate funds to public housing authorities on the basis of the criteria set forth in 24 C.F.R. § 882.501.

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[2] These criteria were: "(1) The demonstrated capacity of the [public housing authority] or it contractor(s) to provide the rehabilitation technical assistance to Owners required under the Program; (2) The availability of financing resources, both assisted and unassisted, as demonstrated through statements from financing agencies..., (3) The [public housing authority's] experience with the Section 8 Existing Housing Program or the [public housing authority's] overall administrative capability; (4) The potential of achieving, as expeditiously as possible, the rehabilitation and leasing of housing units under this Subpart; and (5) The overall feasibility of the proposed program." 24 C.F.R. § 882.501 (1984).

Department officials instead used "informal and undocumented discretionary methods to allocate funding."[3] OIG **[p. 6]** AUDIT REPORT at 5. As a result, "individual allocations were relatively large; certain states and [housing authorities] received a disproportionate share of funding; and several former [Department] officials and employees participated in the [Moderate Rehabilitation Program]," *Id.* at 6. Moreover, the Inspector General determined that, in many cases, decisions to fund specific rehabilitation projects were made at the Departmental level, rather than by local public housing authorities as required by 24 C.F.R. §§ 882.503-882.504 (1982). OIG AUDIT REPORT at 6 ("[W]e noted conditions that indicated the Headquarters selection was targeted for a specific project within a [public housing authority's] jurisdiction."). The Inspector General drew these conclusions by reviewing the selection process for 69 moderate rehabilitation projects. For 19 of these projects, the Inspector General found that developers had approached housing authorities with claims that if the authority applied for funding, an award would probably be forthcoming. *Id.* at 7. For 25 projects, developers seeking moderate rehabilitation awards paid consultants -- including former Department officials -- essentially to lobby the Department for funds. *Id.* And for 49 projects, ultimate awards made by the Department

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[3] According to the Inspector General's report, the Department based its discretionary approach to funding decisions on an oral opinion issued by the Department's General Counsel. Former Department Secretary Pierce testified at the House subcommittee hearings that, as he understood that opinion, Congress' waiver of § 213(d) meant that the criteria set out in 24 C.F.R. §882.501 no longer applied to moderate rehabilitation funding decisions. OIG AUDIT REPORT at 5; HOUSE REPORT at 10-11. However, the former General Counsel denied having given such an assessment of § 213(d)'s effect on moderate rehabilitation funding decisions. HOUSE REPORT at 11.

or the housing authority closely approximated the number of units owned or controlled by a specific developer. *Id.*

According to the government (as we shall refer to the Independent Counsel), Dean was one of the officials who, ignoring the Department's published regulations, used her position to secure moderate rehabilitation funds for developers willing to pay huge fees to lobbyists with whom she associated. All three of the conspiracy counts in the indictment alleged that Dean had violated 18 U.S.C. § 371 by defrauding the United States and the Department.[4] The [p. 7] third conspiracy count added a charge that Dean conspired to violate 18 U.S.C. § 201(c)(1)(B) by accepting $4,000 in exchange for her performing official acts. Acceptance of the illegal gratuity was also the foundation of Count Four of the indictment, which charged Dean with violating 18 U.S.C. § 201(C)(1)(b).

The remaining eight counts of the indictment stem from statements Dean made before the Senate Committee on Banking, Housing, and Urban Affairs, in a hearing held on August 6, 1987, regarding her nomination to be the Department's Assistant Secretary of Community Planning and Development. Counts Five, Seven, Nine, and Eleven charged Dean with perjury in violation of 18 U.S.C. § 1621 for four statements Dean made at the Senate hearing. Those four statements were also the bases for Counts Six, Eight, Ten, and Twelve, which alleged that Dean engaged in a scheme to

---

[4] The indictment charged that Dean had defrauded the United States and the Department by depriving the Department and the citizens of the United States of their right to Dean's "conscientious, loyal, faithful, disinterested and unbiased services" and their right to have the Department's "business and affairs conducted in an honest and impartial way."

conceal material facts she had a duty to disclose, in violation of 18 U.S.C. § 1001.

We will deal first with Dean's contention that the jury did not have sufficient evidence before it to find her guilty on any of these twelve counts, a contention on which she can prevail only if, viewing the evidence in the light most favorable to the government, we conclude that no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). As to the first three counts, we are mindful that "[p]articipation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collocation of circumstances.'" *Glasser v. United States*, 315 U.S. 60, 80 (1942) (citation omitted).

A. Conspiracy Charges

To establish a conspiracy under 18 U.S.C. § 371, the government had to prove: (1) Dean agreed with at least one other person to defraud the United States or, for Count Three, **[p. 8]** to commit an offense against the United States by violating 18 U.S.C. § 201(c)(1)(B); (2) Dean knowingly participated in the conspiracy with the intent to defraud the United States or to commit an offense against the United States; and (3) at least one overt act was committed in furtherance of the conspiracy. *United States v. Treadwell*, 760 F.2d 327, 333 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 1064 (1986). The fraud covered by § 371 "reaches any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." *Tanner v. United States*, 483 U.S. 107, 128 (1987) (internal quotations and citations omitted). Thus, if the government's evidence showed that Dean conspired to impair the functioning of the Department of Housing and Urban Development, "no other form of injury to the Federal

Government needs to be established for the conspiracy to fall under § 371." *Id.*

According to the indictment, all three conspiracies followed the same pattern. Developers seeking moderate rehabilitation funding hired Dean's co-conspirators, "consultants" who held themselves out as able to obtain moderate rehabilitation awards. Dean used her influence at the Department to make sure that projects operated by her co-conspirators' clients received program monies or other favorable treatment at the Department. Dean's co-conspirators were paid substantial "consulting fees" for their services. In exchange for Dean's facilitating decisions favorable to their clients, her collaborators helped her professionally and politically worked for free on her behalf, and in one instance, gave her $4,000. To hide the conspiracies, Dean concealed the way the Department actually made its funding decisions.

Dean worked for the Department of Housing and Urban Development from 1982 to 1988. She began her tenure as a Special Assistant to Department Secretary, Samuel R. Pierce, Jr., and as Director of the Executive Secretariat. HOUSE REPORT at 86-87. In June 1984, she became Secretary Pierce's top aide, with the title of Executive Assistant. *Id.* at 87. She resigned from this position in July 1987, after she was nominated to be Department Assistant Secretary of Community Planning and Development. Pending Senate **[p. 9]** Committee hearings on her nomination, Dean continued to work for the Department as a paid consultant. The Senate did not confirm Dean as Assistant Secretary, and on January 8, 1988, she left the Department.

At trial, the government showed that Dean took an active role in administering the Moderate Rehabilitation Program after she became Secretary Pierce's Executive Assistant. According to the testimony of former Department officials, Dean's power stemmed from Secretary Pierce's

remote and uninvolved management of the Department. These officials characterized Secretary Pierce's management style as "very strange and interesting," "totally hands off," "detached," and "not involved to any significant degree." In one official's view, responsibility for "running the Department, up to and including funding decisions," fell to Secretary Pierce's Executive Assistant, the position Dean held from June 1984 to July 1987.

A Department employee responsible for releasing moderate rehabilitation funds to the field testified that she met with Dean in September 1985, and Dean told her "which units [the Department] would fund," often referring by name to individual developers' or consultants' projects. This official also testified that there were "no selection criteria for where the funding would ultimately go" and that funding decisions were "political." In some cases, public housing authorities had not even requested money for the projects Dean directed the official to fund, and an executive assistant would "work with Debbie... to be sure that the application was in and on file before the money would be released." Another official recalled a meeting at which Dean dictated "which particular public housing authorities were to receive an allocation of Moderate Rehabilitation units." Again, for a few of the public housing authorities Dean had named as funding recipients, there were no applications requesting funds, and Dean said that "she would take care of making sure that the letters were found or were obtained." Dean herself behaved as though she had the power to approve grants of moderate rehabilitation funding at the Department, as suggested by a February 1, 1985, memorandum regarding the departure of the **[p. 10]** Assistant Secretary for Housing/Federal Housing Commissioner. Dean wrote the acting commissioner that Secretary Pierce's Office would concur on all moderate rehabilitation funding decisions "not previously approved by both [the former commissioner] *and myself,*" until a new housing commissioner was named.

To this general evidence -- Dean's facilitation of the funding of unnamed projects connected with unnamed developers and consultants, and her memorandum suggesting that she had the authority to approve moderate rehabilitation awards -- the government added specifics, purportedly linking Dean to various co-conspirators and to funding decisions for particular moderate rehabilitation projects. Whether this specific evidence, when added to the general, supports Dean's conviction on any of the three conspiracy counts is in dispute.

* * *

[p. 30]

B. Perjury and 18 U.S.C. § 1001 Violations

The other eight counts in the indictment arise from Dean's testimony on August 6, 1987, before the Senate Committee on Banking, Housing and Urban Affairs regarding her nomination for Assistant Secretary for Community Planning and Development. Had the Senate confirmed Dean to this position, she would have advised the Department Secretary on community and economic development programs. Counts Five, Seven, Nine, and Eleven allege that Dean committed perjury in violation of 18 U.S.C. § 1621 for statements she made before the Senate committee. For each of the allegedly **[p. 31]** perjurious statements, the government also charged Dean -- in Counts Six, Eight, Ten, and Twelve -- with violations of 18 U.S.C. § 1001. In the words of the indictment, Dean violated § 1001 because she knowingly made these statements pursuant to "a trick, scheme and device to falsify, conceal and cover up material facts."

We reverse Dean's convictions on Counts Six, Eight, Ten, and Twelve. Section 1001 criminalizes the concealment of material facts only in matters "within the jurisdiction of any department or agency or the United States." 18 U.S.C. § 1001. After oral argument in this case the Supreme Court

reversed *United States v. Bramblett*, 348 U.S. 503, 509 (1955), which had interpreted "department," as used in § 1001, to include the executive, judicial and legislative branches of the federal government. *Hubbard v. United States*, 1995 WL 283475, at *11 (U.S. May 15, 1995). In *Hubbard*, the Court narrowed the reach of § 1001 to matters within the executive branch, a coverage consistent with both the common usage of "department" and that term's definition in Title 18. *Id.* at *3-4, *11. Dean was convicted on Counts Six, Eight, Ten, and Twelve for statements she made before Congress.[5] Her convictions on these counts therefore cannot stand.

* * *

[p. 40]

B. Alleged Prosecutorial Misconduct

Dean next claims that the trial court erred in not granting her motion for a new trial because of the prosecutor's conduct before and during trial. She argues that the government violated the obligations to provide her with exculpatory information, *see Brady v. Maryland*, 373 U.S. 83 (1963), and that the prosecutor's closing argument was impermissible.

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[5] By contrast, the government supported Counts One, Two and Three, in which it claimed that Dean had conspired to violate 18 U.S.C. § 1001, with evidence of actions Dean took as a Department official. This conduct was plainly within the jurisdiction of an executive agency -- the Department of Housing and Urban Development. *See supra* p. 30 n.9.

1. Brady Issues

Brady v. Maryland, 373 U.S. at 87, requires the prosecution to disclose to an accused exculpatory information that is both favorable and material to guilt or punishment. This duty extends to evidence drawing into doubt the credibility of a witness when the witness' reliability may be determinative of guilt or innocence. *Giglio v. United States*, 405 U.S. 150, 154 (1972). Evidence is material if there is a reasonable probability that, had the evidence been disclosed, the outcome of the proceeding would have differed. *United States v. Bagley*, 473 U.S. 667, 682 (1985). A reasonable probability is a "probability sufficient to undermine confidence in the outcome." *Id.* When the government delays disclosing exculpatory evidence, the defendant must show a reasonable probability that an earlier disclosure would have changed the trial's result. *United States v. Tarantino*, 846 F.2d 1384, 1417 (D.C. Cir.), *cert. denied*, 488 U.S. 840, 867 (1988). If a defendant receives exculpatory evidence "in time to make effective use [p. 41] of it," a new trial is, in most cases, not warranted. *United States v. Paxson*, 861 F.2d 730, 737 (D.C. Cir. 1988).

Dean points to a number of instances in which the government was either delinquent in complying with its *Brady* obligations or did not comply with *Brady* at all. First, despite a June 30, 1992, order from the court to product exculpatory evidence, the government did not provide her with three potentially exculpatory statements from interviews until August 20, 1993, less than two weeks before jury selection. Brief for Appellant at 45. At this time, the government disclosed: (1) Shelby had told the prosecution that, as far as he knew, Dean did not know of Mitchell's involvement in the Park Towers Apartments project; (2) Kitchin had denied that Dean had provided any personal favors for him relating to Department business; and (3) the manager of the Baltimore Uplift One project had said that

Dean was not involved in that project. *Id.* at 46 n.27. Second, the government did not identify as exculpatory a statement from an interview with Shelby indicating that Shelby had tried to keep Dean from finding out about Mitchell's involvement with Park Towers. On the first day of trial, Dean located this remark in a witness statement provided by the government pursuant to the Jencks Act, 18 U.S.C. § 3500. Brief for Appellant at 47 n.30. Third, the government failed to classify as exculpatory certain telephone messages to Mitchell. Dean claims that these messages showed Lance Wilson, Dean's predecessor as Executive Assistant, was Mitchell's contact on the Arama project, not Dean. *Id.* at 47 n.31. Dean obtained this information through discovery.

Dean also complains that the government presented "false evidence" at trial because it introduced a number of Sankin's credit card receipts that indicated he had entertained and given gifts to Dean. On cross-examination, Sankin stated that he had told counsel for the government that several of the charge slips introduced into evidence "were definitively not related to Deborah Dean." At a bench conference, government counsel explained that on the previous day Sankin told him that "he had no specific recollection" regarding any of the receipts, even the ones bearing Dean's name. **[p. 42]** Observing that the government should have alerted the court and defense counsel to Sankin's statement, the judge gave defense counsel three choices. The court would either strike the documents, give the jury cautionary instructions, or defense counsel could simply cross-examine Sankin and discredit his testimony. Dean's counsel opted to continue cross-examination.

We deplore the government's tardiness in producing the statements from Shelby, Kitchin, and the manager of the Baltimore Uplift One project and its failure to identify the Shelby statement and the telephone messages as exculpatory. We agree with the district court that the government should

have notified that court and Dean's counsel of Sankin's statement regarding the charge card receipts. Nevertheless, because Dean has not established that the government's dereliction materially prejudiced her defense, she is not entitled to a reversal of her conviction on any count. Dean effectively used, or had an opportunity to use, all the late-disclosed or unsegregated exculpatory evidence at trial. On cross-examination, Shelby repeated the statements he made to the government in interviews.[6] Shelby said that when he entered into the agreement with Mitchell he was not aware of Mitchell's relationship with Dean and that as far as he knew, Dean never knew Mitchell received a consulting fee from any of Shelby's projects. He admitted that he intentionally did not tell Dean that he paid Mitchell any money.

Dean also used Kitchin's statement effectively. On cross-examination, Kitchin testified that no one at the Department -- including Dean -- did anything for him "that wasn't right ... [or that was] corrupt." Further, the government's late production of the exculpatory statement of the manager of the Baltimore Uplift One project did not materially prejudice Dean's defense. Dean had the statement in time to make use of it. In fact, the manager's name was on Dean's **[p. 43]** list of potential witnesses on September 7, 1993, nearly one month before she began presenting her case. That she chose not to call the manager to testify undermines her claim that this testimony would have affected the outcome of the trial. Dean also effectively used the phone messages that the government did not segregate as exculpatory. The government provided the messages to Dean

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[6] Both of Shelby's statements relate to Dean's knowledge of Mitchell's involvement in the Park Towers Apartment's project We have already concluded that the evidence relating to this housing development is not sufficient to constitute an overt act in furtherance of the conspiracy charged in Count One. *See supra* p 13.

more than a year before trial, she placed the documents into evidence at trial, and argued their significance to the jury. Finally, we think that whatever prejudice Dean suffered from the government's use of the Sankin receipts is of her own making. The trial court gave Dean's counsel the choice of striking this evidence. Instead, he chose to leave it before the jury and to attempt to undermine Sankin's credibility by using the receipts on cross-examination. In short, Dean has not shown the kind of prejudice necessary to warrant the granting of a new trial on the basis of *Brady* violations.

2. Closing Argument

In his closing and rebuttal arguments, the prosecutor parsed Dean's six days of testimony. At least thirty-one times in his arguments, he questioned Dean's veracity and described her testimony as lies. Dean points to the following examples:

> What about the defendant's case? What has the defendant shown to you in this trial? Her entire case rests on her credibility, her believability. The first thing you must ask yourselves, ladies and gentlemen, is, is the defendant a credible witness? Did she tell you the truth?
>
> * * *
>
> She lied to you ... She lied to this Court before you. Having done that, does anything else make any sense? Can you see her as being a credible witness?
>
> * * *
>
> Based on her lies you should throw out her entire testimony. Her six days' worth of testimony is worth nothing. You can throw it out the window into a garbage pail for what it's worth, for having lied to

> you. But why do we keep going? **[p. 44]** Why do we keep asking questions? Because it was filtered with lies. Her entire testimony just kept changing.
>
> * * *
>
> In order to believe her you have to believe that John Mitchell is lying.... Jack Brennan lied to her. Rick Shelby lied to her. Maurice Barksdale is mistaken. Janet Hale is mistaken. Andrew Sankin, lied. Lance Wilson, lied. Linda Murphy, lied. Silvio DeBartolomeis, lied. Philip Winn, mistaken. Susan Zagame, mistaken. Thomas Demery lied. Sherrill Nettles-Hawkins, mistaken. Everybody else lied or was mistaken, but not her.
>
> But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It doesn't square with common sense. It is lies piled upon lies. It crumbles to pieces the minute you look at it.

Dean contends that these and similar comments were impermissible and require reversal of her convictions.

"Lies" and "lying" are hard words. But this was closing argument, not a polite social conversation. Dean was charged with perjury. The prosecutor had every right to argue that she had not told the truth. He could have told the jury that the evidence proved Dean had been "untruthful," or that she "fabricated her testimony," or "prevaricated," or that she "bore false witness," "made up her story," "is not to be believed," "violated her oath." These and many other words and phrases would have conveyed the same idea as "lie" and "lying," perhaps not as forcefully, or, depending on the prosecutor's rhetorical skill, perhaps more forcefully. Still, is there any reason in law why the words "lie" and "lying"

should be banned from the vocabulary of summation, particularly in cases that turn on the defendant's credibility? We conceive of none, so long as the prosecutor sticks to the evidence and refrains from giving his personal opinion. Compare *Harris v. United States*, 402 F.2d 656 (D.C. Cir. 1968); *Olenin v. Curtin & Johnson, Inc.* 424 F.2d 769 (D.C. Cir. 1970) (per curiam). Other courts have reached the same conclusion. See [p. 45] *United States v. Jacoby*, 955 F.2d 1527, 1540-11 (11th Cir. 1992), cert. denied, 113 S. Ct. 1282 (1993); *Bradford v. Whitley*, 953 F.2d 1008, 1013 (6th Cir. 1991), cert. denied, 113 S. Ct. 91 (1992); *United States v. Molina*, 934 F.2d 1440, 1445 (9th Cir. 1991); *United States v. Peterson*, 808 F.2d 969, 977 (2d Cir. 1987); *United States v. Chaimson*, 760 F.2d 798, 811 (7th Cir. 1985); *United States v. Birges*, 723 F.2d 666, 671-72 (9th Cir.), cert. denied, 469 U.S. 863 (1984). Of course, a prosecutor can overdo it. Whether the prosecutor has struck a foul blow instead of just a hard one is largely for the district court to decide. Much depends on context and tone. In this case, to the extent the prosecutor's remarks spilled over into expressions of personal belief, or may have been so perceived by the jurors -- for example, "she's the only one we know who definitively did lie" -- the district court cured the problem. The court instructed the jury not to consider the opinion of counsel about who lied because it was up to the jury alone to decide who was telling the truth.

The district court sentenced Dean to concurrent terms of 21 months' imprisonment on all counts. Dean challenges her sentence on the grounds that the district court erred in applying the Sentencing Guidelines to Counts One and Two, and that court abused its discretion in adjusting her sentence

on these counts upward 6 levels. (The Guidelines did not apply to any of the other counts.)[7]

We agree with Dean that the district court should not have sentenced her on Count One under the Guidelines and we therefore vacate her sentence on this count. As to Count Two, we agree with the district court that the Guidelines applied. **[p. 46]** Nevertheless, we vacate the sentence on that count so that the district court may reconsider its upward adjustment of Dean's offense level in view of our conclusions regarding the sufficiency of the evidence. Since it appears that the district court arrived at the 21-month term imposed with respect to the other counts on the basis of the Guideline sentence for Counts One and Two, we vacate the sentence on those other counts and remand for resentencing (except of course in regard to Dean's convictions on Counts Six, Eight, Ten, Eleven, and Twelve, which we reverse).

The district court sentenced Dean under the Guidelines on Counts One and Two because it found that the conspiracies charged in these counts continued after November 1, 1987. A conviction for a conspiracy that began before November 1, 1987, the effective date of the Guidelines, but continued after that date, is subject to the Guidelines. *United States v. Milton*, 8 F.3d 39, 48 (D.C. Cir. 1993), cert. denied, 115 S. Ct. 299 (1994); *United States v. Dale*, 991 F.2d 819, 853 (D.C. Cir.), cert. denied, 114 S. Ct. 286 (1993). As to Count One, the district court identified three acts of Dean's alleged co-conspirators that extended the conspiracy beyond November 1, 1987; a May 11, 1990 letter

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[7] The district court sentenced Dean on Counts Three through Twelve under the sentencing laws in effect before the effective date of the Guidelines. For each of these counts, the court ordered Dean to serve twenty-one months' confinement, to run concurrently with each other and with the sentences imposed under Counts One and Two.

from Louie Nunn to Aristides Martinez requesting that Martinez release from escrow Nunn's fee for services he performed for the South Florida I development; Nartinez' authorizing the escrow agent to pay Nunn; and Nunn's acceptance of that payment. We have already held that the evidence relating to the South Florida I project could not support a jury finding that Dean and her collaborators engaged in overt acts to further the conspiracy. See supra pp.14-15. Even the less demanding preponance-of-the-evidence standard, used when factual issues determine whether the Guidelines apply, Milton, 8 F.3d at 48, has not been satisfied, for the reasons we already given. Because the evidence is not sufficient to show that the conspiracy continued beyond November 1, 1987, the district court clearly erred in applying the Guidelines to Dean's sentence under Count One and we therefore vacate it. See United States v. Dale, 991 F.2d 819, 854 (D.C. Cir.), cert. denied, 114 S. Ct. 286 (1993).

[p. 47] The second count is another matter. The district court found that the conspiracy charged in Count Two continued after November 1, 1987, because Sankin received payments for his consulting services after this date. At trial, the government showed that Sankin received checks for $25,000 from the developer of the Puerto Rican Alameda Towers project on December 1, 1987, and on March 19, 1990. We agree that a preponderance of the evidence showed that Sankin's receipt of these payments was within the scope of the conspiracy between Dean and Sankin and was a reasonably foreseeable consequence of their unlawful actions. Cf. Milton, 8 F.3d at 48. Accordingly, the district court correctly used the Guidelines in sentencing Dean on Count Two.

Nevertheless, we think it appropriate to permit the district court to reconsider its upward adjustment of Dean's offense level in view of our conclusions about the sufficiency

of the evidence on this count.[8] We recognize that a sentencing [p. 48] court may impose a sentence outside the range established by the applicable guideline if the court finds an aggravating circumstance not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. United States Sentencing Commission, Guidelines Manual § 5K2.0, p.s. (Nov. 1990). Nevertheless, such a departure is "warranted only if the factor is present to a degree substantially in excess of that which is ordinarily involved in the offense". *Id.* In light of our ruling that much of the government's evidence of overt acts in furtherance of

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[8] Applying the 1990 version of the Guidelines, the district court determined Dean's total offense level was 16. It assigned Dean a base offense level of 6 under § 2F1.1, the guideline for fraud and deceit. It then increased the base offense level to 10, adding 2 levels under § 2F1.1(b)(2) because the offense involved more than minimal planning and another 2 levels under § 3B1.3 because Dean had abused a position of public trust. Departing from the guidelines, the court then added 6 levels to Dean's offense level, giving her a total offense level of 16.

The district court arrived at the 6-level upward departure by looking to § 2C1.2(b)(2)(B), the guideline for gratuity offenses, which provides for an 8-level increase for officials holding a high level decision-making position. Taking into account the 2-level increase for Dean's abuse of position of public trust, the court only adjusted Dean's sentence upward by 6 levels. The court found the increase necessary because Dean's conduct "along with others at HUD caused a major scandal that certainly eroded the public confidence in HUD, if not in the federal government". Dean's criminal history category was I. The corresponding sentencing range under the 1990 Guidelines was 21-27 months' imprisonment. United States Sentencing Commission, Guidelines Manual § 5A (Nov. 1990).

the conspiracy alleged in Count Two was insufficient, the district court should reassess whether circumstances still warrant its upward departure".[9]

We also vacate Dean's sentences on Counts Three, Four, Five, Seven and Nine. The district court apparently wished to sentence Dean to concurrent terms of equal length on all counts. Because Dean's sentence on Count Two may change after the district court reconsiders its decision to adjust Dean's sentence upward, we think it appropriate to permit the court to resentence Dean on these counts as well. See *United States v. Wright,* 12 F.3d 70, 75 (6th Cir. 1993).

* * *

In conclusion, we reverse Dean's convictions on Counts Six, Eight, Ten, Eleven and Twelve. We affirm her convictions on Counts One, Two, Three, Four, Five, Seven and Nine, but vacate her sentences on those counts and remand to the district court for resentencing.

So ordered.

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[9] Although the Guidelines do not apply to Count One, in resentencing Dean on this count, the district court should similarly bear in mind that much of the government's evidence was insufficient to show that Dean committed overt acts in furtherance of the conspiracy alleged in the indictment.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-3021

September Term, 1995

UNITED STATES OF AMERICA,

Appellee

v.

DEBORAH GORE DEAN

Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Before: WALD, SILBERMAN and RANDOLPH, Circuit Judges

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and ADJUDGED, by the Court, that the judgment of the District Court appealed from in this cause is hereby affirmed in part and reversed in part, and the case is remanded for resentencing, in accordance with the opinion for the court filed herein this date.

FOR THE COURT:
MARK J. LANGER
CLERK

By:_____
Robert A. Bonner
Deputy Clerk

DATE: May 26, 1995

Opinion for the Court filed by Circuit Judge Randolph

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 94-3021

September Term, 1995

UNITED STATES OF AMERICA,

Appellee

v.

DEBORAH GORE DEAN

Appellant

Before: WALD, SILBERMAN and RANDOLPH,
Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed July 6, 1995 the response thereto and of the memorandum of the United States as *amicus curiae*, it is

ORDERED that the petition be denied.

PER CURIAM

FOR THE COURT:
MARK J. LANGER
CLERK

By: _____
Robert A. Bonner
Deputy Clerk

DATE: September 13, 1995

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Holding A Criminal Term
Grand Jury Sworn In On December 6, 1990

UNITED STATES OF AMERICA,

v.

DEBORAH GORE DEAN,

Defendant.

SUPERSEDING INDICTMENT

* * *

5. From in and around November 1982 to in and around the Spring of 1984, the defendant DEBORAH GORE DEAN was the Director of the Executive Secretariat of HUD and a Special Assistant to the Secretary of HUD; and from in and around the Spring of 1984 through July 1987, the defendant DEBORAH GORE DEAN was Executive Assistant to the Secretary of HUD with responsibilities ranging over all HUD Programs, including the Mod Rehab Program.

* * *

8. In and around June 1987, the defendant DEBORAH GORE DEAN was officially nominated by the White House for the position of Assistant Secretary of HUD for Community Planning and Development, a nomination she had actively sought since at least as early as the Fall of 1986. This post required Senate confirmation.

9. In and around July 1987, the defendant DEBORAH GORE DEAN officially resigned from her position as Executive Assistant to the Secretary of HUD, but remained at HUD as a paid consultant, pending hearings by a Senate Committee on her nomination for the position of Assistant Secretary of HUD.

10. The Committee on Banking, Housing, and Urban Affairs of the United States Senate ("the Senate Banking Committee") is a committee of the United States Senate with oversight responsibilities for HUD. On or about August 6, 1987, the defendant DEBORAH GORE DEAN testified on her own behalf, under oath, before the Senate Banking Committee, which was conducting hearings on her nomination.

11. During her testimony before the Senate Banking Committee, the defendant DEBORAH GORE DEAN stated under oath, among other things, "I have never given or approved or pushed or coerced anyone to help any developer...," and that with respect to attempts by developers to try to meet with people at the HUD Washington headquarters, "[i]t's a tremendous waste of time..."

12. In making these statements, among others, the defendant DEBORAH GORE DEAN: (a) continued a pattern of conduct designed to conceal the manner in which the Mod Rehab funding process was, in fact, being administered and her role in the administration of the Program; and, (b) attempted to assure the continued funding of the projects she had facilitated for the benefit of her Co-conspirators; and, (c) tried to protect herself and her Co-conspirator from discovery; and, (d) misled the Senate and the American public.

13. The defendant DEBORAH GORE DEAN was not confirmed by the Senate as an Assistant Secretary of HUD.

On or about January 8, 1988, she left HUD and established a consulting firm.

* * *

COUNT ONE
(Conspiracy)
Statutory Allegations

1. Beginning in and around 1983, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including the present, in the District of Columbia and elsewhere, the defendant DEBORAH GORE DEAN did unlawfully, knowingly, and willfully combine, conspire, confederate and agree with Unindicted Co-conspirator One, and Unindicted Co-conspirators Two and Three, and other Unindicted Co-conspirators, known and unknown to the Grand Jury:

A. to defraud the United States and an agency of the United States by depriving HUD and the citizens of the United States of their right to the conscientious, loyal, and faithful, disinterested and unbiased services, actions, and performance of official acts by the defendant DEBORAH GORE DEAN in her official capacity, free from deception, fraud and improper and undue influence; and

B. to defraud the United States and an agency of the United States by depriving HUD and the citizens of the United States of their right to have HUD's business and affairs conducted in an honest and impartial way, as the same should be, free from deception, fraud, and improper and undue influence; and

C. to commit offenses against the United States, to wit, the defendant DEBORAH GORE DEAN, in matters within the jurisdiction of a department and agency of

the United States, would knowingly and willfully falsify, conceal, and cover up material facts, by a trick, scheme and device, in violation of Title 18, United States Code, Section 1001.

* * *

Goals of the Conspiracy Charged in Count One

* * *

13. It was a further goal of the conspiracy that the defendant DEBORAH GORE DEAN would falsify, conceal, and cover up the manner in which HUD funding decisions were actually made in order to hide the existence and ongoing nature of the conspiracy.

Manner and Means of Accomplishing the Goals of the Conspiracy Charged in Count One

* * *

23. It was a further part of the conspiracy that defendant DEBORAH GORE DEAN would falsify, conceal and cover up the manner in which HUD funding decisions, including Mod Rehab funding decisions, were actually made, in order to hide the existence and ongoing nature of the conspiracy, so that its goals might be accomplished.

OVERT ACTS OF THE CONSPIRACY CHARGED IN COUNT ONE

On or about the dates set forth below, among others, in the District of Columbia and elsewhere, the following overt acts, among others, were committed or caused to be committed in furtherance of the conspiracy and to effect the goals thereof;

The Arama Project

24. On or about a date after February 6, 1983, the defendant DEBORAH GORE DEAN wrote a note to "JNM," on another HUD employee's note, "re: MarBilt," a Florida housing development company in which Art Martinez had an interest.

25. On or about March 31, 1983, Co-conspirator Two caused a letter to be sent addressed to Co-conspirator One, regarding Co-conspirator One's assistance at HUD in connection with a problem Marbilt and Art Martinez had with the Jacksonville HUD Field Office.

26. On or about a date after March 31, 1983, the defendant DEBORAH GORE DEAN caused a letter to be sent to Co-conspirator One, addressed to "Dear Dad," enclosing internal HUD correspondence relating to the Marbilt problem.

27. On or about a date after October 7, 1983, the defendant DEBORAH GORE DEAN sent a note to Co-conspirator One addressed to "Daddy," enclosing an internal HUD memo relating to the favorable resolution at HUD Central of the Marbilt problem.

28. On or about January 5, 1984, Art Martinez sent a letter to Co-conspirator Two, addressed to "Global Research, 2828 Pennsylvania Avenue, Washington, D.C.," a company in which Co-conspirator One had an interest.

29. On or about January 25, 1984, Co-conspirator Two entered into agreements with Art Martinez and his partners in which Co-conspirator Two contracted to obtain up to 300 Mod Rehab units for use by Arama Ltd., in Dade County, Florida. The contract provided that Arama would pay

Co-conspirator Two a total of $375,000 for his services, $225,000 in legal fees and $150,000 in consulting fees.

30. On or about January 25, 1984, Co-conspirator Two wrote on the consulting contract document that one-half of the $150,000 was to be paid to Co-conspirator One.

31. On or about April 11, 1984, the agreement between Co-conspirator Two and Arama was increased by $50,000.

32. On or about July 5, 1984, the defendant DEBORAH GORE DEAN signed and caused to be sent a letter addressed to Co-conspirator Two, "c/o Global Research International, 2828 Pennsylvania Avenue, Washington, D.C.," about a "recent telephone conversation with General Mitchell concerning Arama Partnership's request to HUD" for 293 Mod Rehab units, stating that "the Arama Project will definitely receive these units from HUD," and expressing her "hope that the additional units will make the partnership a viable venture."

33. On or about July 6, 1984, Co-conspirator Two caused a letter to be sent to Art Martinez stating that "I can assure you without any reservations that the Arama Rehab project has been approved in the Washington office . . . . "

34. On or about July 17, 1984, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated an award of 293 Mod Rehab units to the Metro-Dade PHA, with a yearly contract authority of approximately $1,869,000, and an overall budget authority of approximately $28,042,000.

35. On or about July 18, 1984, the defendant DEBORAH GORE DEAN caused a HUD Special Services delivery to "Arama Partnership, c/o Global Research Int'l,

2828 Pennsylvania Avenue, Suite 300, Washington, D.C.," enclosing a copy of an internal HUD funding document dated July 17, 1984, known as a "Rapid Reply Letter," which reflected the award of 293 Mod Rehab units to the Metro-Date PHA.

36. On or about a date after July 18, 1984, Co-conspirator Two obtained a copy of the "Rapid Reply Letter," dated July 17, 1984, which had been sent by the defendant DEBORAH GORE DEAN to "Arama partnership, c/o Global Research Int'l."

37. On or about July 31, 1984, Co-conspirator One was paid $8,613.94 by Co-conspirator Two for Co-conspirator One's services in connection with the 1983 Marbilt problem with HUD.

38. On or about August 15, 1984, the defendant DEBORAH GORE DEAN originated, and authorized the Secretary's autopen signature on, a letter dated August 15, 1984, in which an officer of the Puerto Rico Housing Finance Corporation was told "[a]s you know HUD does not allocate Section 8 moderate rehabilitation funds on a project basis."

39. On or about January 2, 1985, the defendant DEBORAH GORE DEAN signed and caused to be mailed a letter dated January 2, 1985, addressed to a developer in Cleveland, Ohio, in which she said

> "The Section 8 Moderate Rehabilitation Program is administered by local and State Public Housing Agencies (PHAs). HUD provides Section 8 Moderate Rehabilitation funds to PHAs, which, in turn, advertise the availability of the funds to the general public and competitively select the units to be rehabilitated under the program.... Federal

regulations prohibit HUD from making project specific allocations. Therefore, HUD has no direct role in providing Moderate Rehabilitation funds to specific projects."

40. On or about June 14, 1985, Co-conspirator Two entered into a Memorandum of Understanding with Art Martinez which provided, among other things, that Co-conspirator Two would provide services to Arama in the Jacksonville, Atlanta and Washington HUD offices for the duration of the Arama/HUD Mod Rehab contract, and provided for payments of Co-conspirator Two's fee of $275,000 to be made from an escrow account, at such time and in such manner as agreed between the Parties in proportion to the services rendered.

41. On or about June 14, 1985, the escrow agent was authorized to release $75,000 to Co-conspirator Two.

42. On or about July 1, 1985, Co-conspirator Two caused a letter to be written to Co-conspirator One, enclosing a check in the amount of $75,000 dated July 1, 1985, payable to Co-conspirator One.

43. On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies in connection with the Arama Project, in the approximate amount of $146,000.

The South Florida I Project

44. On or about April 30, 1986, Co-conspirator Two entered into an agreement with Art Martinez and his partners in which Co-conspirator Two contracted to obtain 200 Mod Rehab units for use by a project known as South Florida I, in

Dade County, Florida, and which provided that South Florida I would pay Co-conspirator Two a total of $200,000 for his services.

45. On or about May 21, 1986, Art Martinez wrote a letter to Co-conspirator Two, with a copy to an individual who was Co-conspirator One's business associate in GRI, about the South Florida I project, stating that "[a]s soon as you know that the approval has left Washington, please contact me...," and urging that "if we could get that the fund availability is for 219 units, it would be much better, since then there would be no confusion as to whose proposal it is," and enclosing a copy of a letter of May 21, 1986 from the Metro-Dade PHA to south Florida I in which the PHA acknowledges receipt of a proposal for 219 units and states that "[a]s you know we have no uncommitted Section 8 Moderate Rehabilitation monies."

46. On or about a date after May 21, 1986, the defendant DEBORAH GORE DEAN obtained a copy of the letter of May 21, 1986, from Art Martinez to Co-Conspirator Two, in which Martinez urges the award be for 219, instead of 200 units, to prevent confusion as to the developer's claim on the specific units for his specific project, and a copy of the letter of May 21, 1986 from the Metro-Dade PHA to South Florida I in which the PHA acknowledged receipt of a proposal for 219 units and stated that "we have no uncommitted Section 8 Moderate Rehabilitation monies."

47. On or about June 6, 1986, the defendant DEBORAH GORE DEAN met with the business associate of Co-conspirator One.

48. On or about August 14, 1986, the defendant DEBORAH GORE DEAN caused to be forwarded to HUD's housing office, a copy of the letter of May 21, 1986, from the Metro-Dade PHA to South Florida I in which the PHA

acknowledged receipt of the proposal for 219 units and stated that "we have no uncommitted Section 8 Moderate Rehabilitation monies."

49. On or about September 12, 1986, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated the award of 219 Mod Rehab units to the Metro-Dade PHA, with a yearly contract authority of approximately $1,800,000, and an overall budget authority of approximately $28,000,000.

50. On or about December 18, 1986, Art Martinez received a letter from the Metro-Dade PHA giving South Florida I approval to proceed with 219 units on scattered sites.

51. On or about December 18, 1986, Co-conspirator Two and Art Martinez entered into a Memorandum of Understanding whereby they agreed, among other things, that Co-conspirator Two would provide services to South Florida I, in the Jacksonville, Atlanta and Washington Central HUD offices for the duration of the South Florida I/HUD Mod Rehab contract, and which provided for periodic partial payments of Co-conspirator Two's $219,000 fee from escrow, made at such time and in such manner as agreed between the Parties in proportion to the services rendered.

52. On or about December 19, 1986, Co-conspirator Two entered into an agreement with South Florida I, and an escrow agent, providing that Co-conspirator Two was to be paid $219,000 in fees on the South Florida I contract by the escrow agent, that $109,000 had been released, and that the remaining $110,000 would be paid from time to time, with final payment coming upon completion of the duties of Co-conspirator Two.

53. On or about December 22, 1986, Co-conspirator Two acknowledged receipt of a check from South Florida I in the amount of $109,000 dated December 18, 1986, for "consultant fee."

54. On or about December 22, 1986, Co-conspirator Two caused a letter to be written to Co-conspirator One's business associate, enclosing a check in the amount of $109,000, dated December 22, 1986, payable to GRI, for "consulting services - S. Fla. One."

55. On or about January 2, 1987, Co-conspirator One deposited a GRI check in the amount of $10,000 into his personal bank account.

56. On or about February 1, 1987, GRI paid $50,000 to Co-conspirator One, which he deposited into his personal bank account. Co-conspirator One's business associate also received a $50,000 check from GRI.

57. On or about May 11, 1990, Co-conspirator Two wrote a letter to Art Martinez seeking final payment of the total fees due and owing to the Arama and South Florida I projects.

58. On or about May 16, 1990, an agent of South Florida I executed the "Authorization for Payment" of the balance of the consulting fees on the Arama and South Florida I projects due and owing to Co-conspirator Two.

59. On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies in connection with the South Florida I Project, in the approximate amount of $125,000.

The Park Towers Project

60. On or about May 23, 1985, Co-conspirator One met with Co-conspirator Three.

61. On or about May 30, 1985, Martin Fine, a Florida attorney with an interest in a project known as the Park Towers Apartment Building Project, in Dade County, Florida wrote a letter to Eli Feinberg, an associate/client of Co-conspirator Three, regarding an agreement for Feinberg to obtain an allocation of HUD Mod Rehab funds for the Park Towers project, and suggesting a fee of $150,000 if the unit allocation was obtained before December 31, 1985. Feinberg entered into an agreement with Co-conspirator Three for the purpose of obtaining these units.

62. On or about June 20, 1985, the defendant DEBORAH GORE DEAN wrote a letter to Co-Conspirator Three.

63. On or about July 11, 1985, Martin Fine entered into a letter agreement with Eli Feinberg, increasing the total fee for obtaining an allocation of Mod Rehab units for Park Towers to $225,000.

64. On or about July 31, 1985, Martin Fine had a conversation with Eli Feinberg, in which Feinberg said that "our friend is meeting with the contact at HUD this coming week."

65. On or about August 1, 1985, Co-conspirator Three was scheduled to meet with the defendant DEBORAH GORE DEAN.

66. On or about August 9, 1985, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

67. On or about September 9, 1985, the defendant DEBORAH GORE DEAN met with Co-conspirator One and Co-conspirator Three.

68. On or about September 10, 1985, Co-conspirator Three sent a letter to the defendant DEBORAH GORE DEAN enclosing information regarding the Park Towers Project.

69. On or about November 22, 1985, Co-conspirator Three met with defendant DEBORAH GORE DEAN.

70. On or about November 26, 1985, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated the award of 143 Mod Rehab units to the Metro-Dade PHA, with a yearly contract authority of approximately $935,000, and an overall budget authority of approximately $14,000,000.

71. On or about November 27, 1985, Co-conspirator Three obtained an internal HUD funding document, dated November 26, 1985, known as a "Rapid Reply Letter," indicating that Mod Rehab units had been awarded to the PHA for Metro-Dade, Florida.

72. On or about November 27, 1985, Co-conspirator Three caused his employer to fax a copy of the "Rapid Reply Letter," dated November 26, 1985, to Martin Fine in Florida.

73. On or about November 27, 1985, Co-conspirator Three's employer sent a bill for $45,000 to the developer of Park Towers Apartments, per a July 18, 1985 agreement requiring the payment of $45,000 if an allocation of Mod Rehab units specifically for Park Towers Apartments was obtained before December 31, 1985. The agreement provided for the balance of $180,000 to be paid upon the execution of

the final Housing Assistance Payments ("HAP") contract for Park Towers Apartments.

74. On or about January 17, 1986, the developer of Park Towers Apartments sent a check for $45,000 to the company that employed Co-conspirator Three.

75. On or about February 3, 1986, Co-conspirator Three met with the defendant DEBORAH GORE DEAN and discussed a waiver of HUD regulations in connection with Park Towers Apartments.

76. On or about February 4, 1986, Co-conspirator Three's employer sent a check to Co-conspirator One in the amount of $10,000.

77. On or about January 8, 1987, Park Towers Associates sent a check for $225,000 to the company that employed Co-conspirator Three.

78. On or about January 14, 1987, the company that employed Co-conspirator Three sent a check in the amount of $40,000 payable to GRI, the company in which Co-conspirator One had an interest.

79. On or about October 30, 1987, the defendant DEBORAH GORE DEAN met with Co-conspirator Three.

80. On or about December 15, 1987, Co-conspirator One wrote a check in the amount of $3,324.83 in payment of a bill for a birthday party for the defendant DEBORAH GORE DEAN attended by HUD consultants and employees.

81. On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies

in connection with the Park Towers Project, in the approximate amount of $77,000.

The Nomination of the Defendant DEBORAH GORE DEAN

82. Beginning in the Fall of 1986, Co-conspirator One sought to advance the nomination of the defendant DEBORAH GORE DEAN for the position of Assistant Secretary of HUD.

83. On or about November 4, 1986, Co-conspirator Three added his name to a telegram sent to the Director of White House Personnel supporting the nomination of the defendant DEBORAH GORE DEAN to serve as Assistant Secretary of HUD for Community Planning and Development.

84. On or about April 24, 1987, the defendant DEBORAH GORE DEAN placed or caused to be placed a telephone call to Co-conspirator Two.

85. On or about May 14, 1987, the defendant DEBORAH GORE DEAN placed or caused to be placed a telephone call to Co-conspirator Two.

86. On or about May 18, 1987, the defendant DEBORAH GORE DEAN placed or caused to be placed a telephone call to Co-conspirator Two.

87. In or about June 1987, the defendant DEBORAH GORE DEAN submitted a "Statement for Completion by Presidential Nominees" to the Senate Banking Committee in connection with her nomination to the position of Assistant Secretary of HUD for Community Planning and Development. In that Statement, the defendant DEBORAH GORE DEAN represented that to her knowledge, "no

investments, obligations, liabilities or other relationships exist which might involve potential conflicts of interest" with the position to which she had been nominated.

88. In the course of the August 6, 1987 confirmation hearings about the defendant DEBORAH GORE DEAN before the Senate Banking Committee, the defendant DEBORAH GORE DEAN testified that, among other things, Mod Rehab awards were made by a panel at HUD that "goes solely on information provided by the Assistant Secretary for Housing," that she had "never given or approved or pushed or coerced anyone to help any developer," and that "[i]t's a tremendous waste of time" for developers to meet with HUD employees regarding Mod Rehab funding. In violation of Title 18, United States Code, Section 371.

COUNT TWO
(Conspiracy)
Statutory Allegations

1. Beginning in and around 1984, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including the present, in the District of Columbia and elsewhere, the defendant DEBORAH GORE DEAN did unlawfully, knowingly, and willfully combine, conspire, confederate and agree with Unindicted Co-conspirator Four, and Unindicted Co-conspirator Three, and other Unindicted Co-conspirators, known and unknown to the Grand Jury:

A. to defraud the United States and an agency of the United States by depriving HUD and the citizens of the United States of their right to the conscientious, loyal, faithful, disinterested and unbiased services, actions, and performances of official acts by the defendant DEBORAH GORE DEAN in her official capacity, free from deception, fraud and improper and undue influence; and

B. to defraud the United States and an agency of the United States by depriving HUD and the citizens of the United States of their right to have HUD's business and affairs conducted in an honest and impartial way, as the same should be, free from deception, fraud, and improper and undue influence; and

C. to commit offenses against the United States, to wit, the defendant DEBORAH GORE DEAN, in matters within the jurisdiction of a department and agency of the United States, would knowingly and willfully falsify, conceal, and cover up material facts by a trick, scheme and device, in violation of Title 18, United States Code, Section 1001.

* * *

Goals of the Conspiracy Charged in Count Two

* * *

15. It as a further goal of the conspiracy that the defendant DEBORAH GORE DEAN would falsify, conceal, and cover up the manner in which HUD funding decisions were actually made in order to hide the existence and ongoing nature of the conspiracy.

Manner and Means of Accomplishing the Goals of the Conspiracy Charged in Count Two

* * *

25. It was a further part of the conspiracy that the defendant DEBORAH GORE DEAN would falsify, conceal and cover up the manner in which HUD funding decisions were made, in order to hide the existence and ongoing nature of the conspiracy, so that its goals might be accomplished.

OVERT ACTS OF THE CONSPIRACY CHARGED IN COUNT TWO

On or about the dates set forth below, among others, in the District of Columbia and elsewhere, the following overt acts, among others, were committed or caused to be committed in furtherance of the conspiracy and to effect the goals thereof:

Necho Allen Hotel

26. On or about December 10, 1984, Co-conspirator Four entered into an agreement with Pennrose Properties, a housing developer, to obtain a waiver from HUD that would allow higher rents for a low income housing project known as the Necho Allen Hotel, in Pottsville, Pennsylvania. In return for this "exception rent" waiver, Co-conspirator Four was to be paid $10,000.

27. On or about December 22, 1984, the defendant DEBORAH GORE DEAN met with Co-conspirator Four.

28. On or about January 17, 1985, Co-conspirator Four met with defendant DEBORAH GORE DEAN and others regarding the Necho Allen Hotel.

29. On or about January 29, 1985, Co-conspirator Four met with defendant DEBORAH GORE DEAN.

30. On or about January 31, 1985, Co-conspirator Four met with defendant DEBORAH GORE DEAN regarding The Stanley Arms, a rent-controlled apartment building owned by the family of the defendant DEBORAH GORE DEAN.

31. In and around February 1985, the defendant DEBORAH GORE DEAN facilitated and caused to be

facilitated a HUD approval for "exception rents" for the Necho Allen Project.

32. On or about February 12, 1985, the owner of the Necho Allen Hotel wrote to defendant DEBORAH GORE DEAN thanking her for supporting the exception rents he had received for that project.

33. On or about March 1, 1985, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated official notification that HUD Central approved the exception rents for Necho Allen, overruling earlier decisions rejecting the Necho Allen application.

34. On or about March 15, 1985, Co-conspirator Four received a payment of $10,000 for having obtaining exception rents for the Necho Allen Hotel.

35. On or about March 15, 1985, Co-conspirator Four met with the Defendant DEBORAH GORE DEAN.

36. On or about March 27, 1985, the defendant DEBORAH GORE DEAN caused a letter to be written relieving the American Security Corporation as the property manager of The Stanley Arms, for the purpose of appointing Co-conspirator Four to that position.

Regent Street Project

37. On or about January 2, 1985, the defendant DEBORAH GORE DEAN signed and caused to be mailed a letter dated January 2, 1985, addressed to a developer in Cleveland, Ohio, in which she said

> "The Section 8 Moderate Rehabilitation Program is administered by local and State Public Housing Agencies (PHAs). HUD

> provides Section 8 Moderate Rehabilitation funds to PHAs, which, in turn, advertise the availability of the funds to the general public and competitively select the units to be rehabilitated under the program....
>
> Federal regulations prohibit HUD from making project specific allocations. Therefore, HUD has no direct role in providing Moderate Rehabilitation funds to specific projects."

38. On or about March 12, 1985, after an unsuccessful attempt to obtain 26 HUD Mod Rehab units for Regent Street Apartments, in Philadelphia, Pennsylvania, Pennrose Properties asked Co-conspirator Four to assist in obtaining the units.

39. On or about April 1, 1985, John B. Rosenthal, of Pennrose Properties, wrote a letter to Co-conspirator Four, asking for a meeting with "Deborah" to get the "lay of the land."

40. On or about April 9, 1985, Co-conspirator Four wrote to the defendant DEBORAH GORE DEAN, enclosing information on the Regent Street Project.

41. On or about April 22, 1985, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

42. On or about April 26, 1985, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

43. On or about May 10, 1985, the defendant DEBORAH GORE DEAN met with John B. Rosenthal of Pennrose Properties, developer of the Regent Street Project.

44. On or about May 15, 1985, the developer John B. Rosenthal wrote a letter to the defendant DEBORAH GORE DEAN, regarding strategy for getting other HUD Section 8 assistance for the Regent Street Project, in place of the 26 Mod Rehab units, "as discussed at our luncheon."

45. On or about May 22, 1985, the defendant DEBORAH GORE DEAN caused a review by another HUD official of the May 15, 1985 request of the developer John B. Rosenthal. The request was rejected by the other HUD official.

46. On or about June 4, 1985, the developer John B. Rosenthal wrote a letter to the defendant DEBORAH GORE DEAN, proposing another strategy for obtaining the 26 Mod Rehab units for the Regent Street Project.

47. On or about July 12, 1985, the developer John B. Rosenthal wrote a letter to the defendant DEBORAH GORE DEAN seeking her support for an award of the 26 Mod Rehab units for the Regent Street Project.

48. On or about July 16, 1985, the defendant DEBORAH GORE DEAN wrote a letter to developer John B. Rosenthal about his efforts to obtain Mod Rehab units for the Regent Street Project, suggesting she would "be more than happy to discuss your Regent Street Project near October 1 (beginning of Fiscal Year 1986)."

49. On or about July 18, 1985, the developer John B. Rosenthal wrote a letter to the defendant DEBORAH GORE DEAN, thanking her for "confirming your willingness to consider" the Regent Street Project "toward the end of September of this year."

50. On or about August 29, 1985, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

51. On or about September 12, 1985, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated the award of 12 Mod Rehab units to the Philadelphia PHA, with a yearly contract authority of approximately $49,000, and an overall budget authority of approximately $738,000.

52. On or about September 20, 1985, Co-conspirator Four received $1,000 as partial payment of his total fee for his services in obtaining Mod Rehab units for Regent Street Apartments.

53. On or about September 20, 1985, the developer John B. Rosenthal wrote a letter to the defendant DEBORAH GORE DEAN, thanking her for the Mod Rehab units for the Regent Street Project and stating that he hoped "I can count upon you to provide the balance of the 13 units required ...."

54. On or about November 15, 1985, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated an award of 13 Mod Rehab units to the Philadelphia PHA, with a yearly contract authority of approximately $75,000, and an overall budget authority of approximately $1,128,000.

55. On or about December 10, 1985, Co-conspirator Four wrote a letter to John B. Rosenthal, offering to reduce his fee for services in connection with acquisition of 26 Mod Rehab units for the Regent Street Project to $500 a unit (for a total of $13,000) in order to further their future relationship, claiming that "If you shop the consulting market, you will, without question, find that the going market rate consulting fee for Mod Rehab is between $1,000 and $2,000 per unit."

56. On or about January 12, 1988, Co-conspirator Four received $10,000 as final payment for his services in obtaining Mod Rehab units for Regent Street Apartments.

57. On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies in connection with the Regent Street Project, in the approximate amount of $11,000.

Alameda Towers Apartments Project

58. In or about May 1985, Co-Conspirator Four had a conversation with defendant DEBORAH GORE DEAN about obtaining allocations of HUD Mod Rehab units, if he would associate himself with another Co-conspirator, known to the Grand Jury.

59. In and around late Spring 1985, Co-conspirator Four had a conversation with the other Co-conspirator and they entered into a partnership for the purpose of obtaining HUD Mod Rehab units.

60. On or about June 7, 1985, the other Co-conspirator wrote to the defendant DEBORAH GORE DEAN regarding his partnership with Co-conspirator Four and his contacts regarding developers in Puerto Rico seeking Mod Rehab units.

61. On or about June 24, 1985, the defendant DEBORAH GORE DEAN had a conversation with the other Co-conspirator about a commitment of 150 Mod Rehab units to him and Co-conspirator Four for their use in Puerto Rico, and about the possibility of their obtaining control over an additional 150 units.

62. On or about October 22, 1985, Co-conspirator Four and his other Co-conspirator partner agreed with Mora Development Corp., the general partner of Alameda Associates, that Co-conspirator Four and his Co-conspirator

partner were each to be paid $100,000 for obtaining 300 Mod Rehab units for the Alameda Towers Project in San Juan, Puerto Rico.

63. On or about November 27, 1985, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated the award of 260 Mod Rehab units to the Municipality of San Juan PHA, with a contract authority of approximately $1,500,000, and an overall budget authority of approximately $23,600,000.

64. In or about September 1986, Co-conspirator Four and his Co-conspirator partner demanded payment from Alameda Associates for having obtained Mod Rehab units for use in San Juan, Puerto Rico.

65. On or about December 4, 1987, Co-conspirator Four received a partial payment of $25,000 in connection with the Alameda Towers Project, as did his Co-conspirator partner.

66. On or about March 21, 1990, Co-conspirator Four received a partial payment of $25,000 as another partial payment in connection with the Alameda Towers Project, as did his Co-conspirator partner.

67. On or about December 3, 1990, Co-conspirator Four received $25,000 as final payment in connection with the Alameda Towers Project, as did his Co-conspirator partner.

68. On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies in connection with the Alameda Towers project in the approximate amount of $99,000.

Foxglenn Apartments Project

69. On or about March 4, 1986, Co-conspirator Four met with Co-conspirator Three.

70. On or about March 12, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

71. On or about March 21, 1986, Co-conspirator Four had a conversation with an employee of his developer/client Altman Properties ("Altman"), about Mod Rehab units for a project known as Foxglenn, in Prince George's County, Maryland.

72. On or about March 21, 1986, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

73. On or about April 7, 1986, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

74. On or about April 11, 1986, Co-conspirator Four received a letter from Altman Reality, regarding the need for an award of 172 Mod Rehab units for Foxglenn by May 23, 1986.

75. On or about May 9, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

76. In and around May 1986, Co-conspirator Three signed an agreement with Altman to seek 172 Mod Rehab units for the use at the Foxglenn Apartments in return for a consulting fee of $220,000, which he and Co-conspirator Four had agreed to split.

77. On or about May 22, 1986, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated an award of 172 Mod Rehab units to the Prince

George's County PHA, with a yearly contract authority of approximately $1,114,000, and an overall budget authority of approximately $16,718,000.

78. On or about July 10, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

79. On or about July 18, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

80. On or about July 23, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

81. On or about July 25, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

82. On or about August 5, 1985, Co-conspirator Three received a check dated August 5, 1986, in the amount of $107,000 as partial payment of consulting fees from Altman for obtaining the Foxglenn Mod Rehab units. Co-conspirators Four and Three split the payment.

83. On or about August 5, 1986, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

84. On or about August 17, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

85. On or about October 23, 1986, the defendant DEBORAH GORE DEAN asked Co-conspirator Four to make a contribution to the campaign of a candidate running for a seat in the United States Senate from the State of Maryland.

86. On or about October 23, 1986, in response to the request of the defendant DEBORAH GORE DEAN, Co-

conspirator Four wrote and forwarded to the Maryland candidate a check in the amount of $3,000.

87. On or about November 7, 1986, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

88. On or about November 14, 1986, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

89. On or about December 5, 1986, Co-conspirator Four received a check dated December 5, 1985, in the amount of $110,000, as the final installment of the consulting fee paid to Co-conspirators Four and Three for obtaining the Mod Rehab units for the benefit of the developers of Foxglenn. Co-conspirators Four and Three split the payment.

90. On or about December 23, 1986, Co-conspirator Four paid $300 for a "business gift" to the defendant DEBORAH GORE DEAN.

91. On or about December 24, 1986, Co-conspirators met with the defendant DEBORAH GORE DEAN.

92. On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments of federal monies in connection with the Foxglenn Project, in the approximate amount of $101,000.

Eastern Avenue Project

93. In and around the beginning of 1987, Co-conspirators Four and Three agreed to seek additional Mod Rehab units for their developer/client Altman Properties Ltd., and to share equally all fees.

94. On or about January 30, 1987, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

95. On or about February 10, 1987, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

96. On or about March 23, 1987, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

97. On or about April 20, 1987, Co-conspirator Four met with Co-conspirator Three about Eastern Avenue, a housing project in Prince George's County, Maryland for which their developer/client Altman sought 88 Mod Rehab units; they signed an agreement setting forth their earlier understanding with respect to Altman.

98. On or about April 27, 1987, Co-conspirator Four formalized an agreement with Altman, whereby Co-conspirator Four's consulting company would receive a total fee of $115,000 for Eastern Avenue. The agreement provided that $57,500 would be paid upon notification to the PHA of Prince George's County of HUD's approval of 88 Mod Rehab units; and the remaining $57,500 would be payable upon closing of financing for purchase and construction rehabilitation.

99. On or about May 7, 1987, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated a HUD Mod Rehab award of 88 units to the Prince George's County PHA, with a yearly contract authority of approximately $671,000, and an overall budget authority of approximately $10,000,000.

100. On or about May 16, 1987, Co-conspirator Four met with the defendant DEBORAH GORE DEAN.

101. On or about June 15, 1987, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

102. On or about July 7, 1987, Co-conspirator Three met with the defendant DEBORAH GORE DEAN.

103. On or about September 21, 1987, Co-conspirator Three received a check in the amount of $57,700, from Altman Properties, Ltd., in connection with the notification to the Prince George's County PHA of the award of 88 Mod Rehab units.

104. On or about September 29, 1987, Co-conspirator Four received from Co-conspirator Three a check dated September 29, 1987, in the amount of $23,750, which represented Co-conspirator Four's share of the Eastern Avenue consulting fee.

105. On or about September 29, 1987, Co-conspirator Four "entertained" the defendant DEBORAH GORE DEAN, incurring an expense of $72.00.

The Nomination of the Defendant DEBORAH GORE DEAN

106. On or about November 4, 1986, Co-conspirator Three added his name to a telegram sent to the Director of White House Personnel supporting the nomination of the defendant DEBORAH GORE DEAN to serve as Assistant Secretary of HUD for Community Planning and Development.

107. In or about June 1987, the defendant DEBORAH GORE DEAN submitted a "Statement for Completion by Presidential Nominees" to the Senate Banking Committee in connection with her nomination to the position of Assistant Secretary of HUD for Community Planning and

Development. In that Statement, the defendant DEBORAH GORE DEAN represented that to her knowledge, "no investments, obligations, liabilities or other relationships exist which might involve potential conflicts of interest" with the position to which she had been nominated.

108. In the course of August 6, 1987 confirmation hearing about the defendant DEBORAH GORE DEAN before the Senate Banking Committee, the defendant DEBORAH GORE DEAN testified that, among other things, Mod Rehab awards were made by a panel at HUD that "goes solely on information provided by the Assistant Secretary for Housing," that she had "never given or approved or pushed or coerced anyone to help any developer," and that "[i]t's a tremendous waste of time" for developers to meet with HUD employees regarding Mod Rehab funding.

In violation of title 18, United States Code, Section 371.

COUNT THREE
(Conspiracy)
Statutory Allegations

1. Beginning in and around 1986, the exact date being unknown to the Grand Jury, and continuing thereafter up to and including the present, in the District of Columbia and elsewhere, the defendant DEBORAH GORE DEAN did unlawfully, knowingly, and willfully combine, conspire, confederate and agree with Unindicted Co-conspirator Five, and other Unindicted Co-conspirators, known and unknown to the Grand Jury:

A. to defraud the United States and an agency of the United States by depriving HUD and the citizens of the United States of their right to the conscientious, loyal, faithful, disinterested and unbiased services, actions, and performances of official acts by the defendant DEBORAH

GORE DEAN in her official capacity, free from deception, fraud and improper and undue influence; and

B. to defraud the United States and an agency of the United States by depriving HUD and the citizens of the United States of their right to have HUD's business and affairs conducted in an honest and impartial way, as the same should be, free from deception, fraud, and improper and undue influence;

C. to commit offenses against the United States, to wit:

i) the defendant DEBORAH GORE DEAN, while being a public official, and otherwise than as provided by law for the proper discharge of official duty, would directly and indirectly demand, seek, receive, accept and agree to accept a thing of value personally from Co-conspirator Five, to wit $4,000, for and because of official acts performed and to be performed by the defendant DEBORAH GORE DEAN, in violation of Title 18, united States Code, Section 201(c)(1)(B);

ii) the defendant DEBORAH GORE DEAN, in matters within the jurisdiction of a department and agency of the United States, would knowingly and willfully falsify, conceal, and cover up material facts, by a trick, scheme and device, and would make false, fictitious and fraudulent statements and representations, in violation of Title 18, United States Code, Section 1001.

* * *

Goals of the Conspiracy Charged in Count Three

* * *

9. It was a further goal of the conspiracy that defendant DEBORAH GORE DEAN would falsify, conceal, and cover up the manner in which HUD funding decisions were actually made in order to hide the existence of ongoing nature of the conspiracy.

Manner and Means of Accomplishing the Goals of the Conspiracy Charged in Count Three

* * *

19. It was a further part of the conspiracy that the defendant DEBORAH GORE DEAN would falsify, conceal and cover up the manner in which HUD finding decisions were actually made in order to hide the existence and ongoing nature of the conspiracy, so that its goals might be accomplished.

OVERT ACTS OF THE CONSPIRACY CHARGED IN COUNT THREE

On or about the dates set forth below, among others, in the District of Columbia and elsewhere, the following overt acts, among others, were committed or caused to be committed in furtherance of the conspiracy and to effect the goals thereof:

20. On or about June 25, 1986, Co-conspirator Five met with the defendant DEBORAH GORE DEAN.

21. On or about August 20, 1986, Co-conspirator Five met with the defendant DEBORAH GORE DEAN.

22. On or about October 2, 1986, the defendant DEBORAH GORE DEAN caused a note to be written to a HUD employee regarding Plateau Insurance Company, a client of Co-conspirator Five.

23. On or about October 16, 1986, the defendant DEBORAH GORE DEAN met with Co-conspirator Five.

24. On or about October 20, 1986, the defendant DEBORAH GORE DEAN wrote a note to a HUD employee asking him to prepare a letter to Co-conspirator Five advising him how to help a client set up a "sub-company" to meet HUD requirements.

Heritage Village Project

25. In and around the Fall of 1986, Co-conspirator Five asked the defendant DEBORAH GORE DEAN about obtaining an allocation of 200 Mod Rehab units for his use.

26. In and around the Fall of 1986, Co-conspirator Five found an Atlanta, Georgia developer who would pay him $1,000 per Mod Rehab unit directed to the developer through the Atlanta PHA.

27. In and around the Fall of 1986, the defendant DEBORAH GORE DEAN told Co-conspirator Five that she could send the 200 units to the Atlanta PHA.

28. On or just before October 27, 1986, Co-conspirator Five's Atlanta developer/client Nick Bazan caused the Atlanta PHA to write a letter to the HUD Regional office seeking contract and budget authority for 250 Mod Rehab units for a project known as Heritage Village.

29. On or about October 29, 1986, the defendant DEBORAH GORE DEAN facilitated and caused to be

facilitated an award of 200 Mod Rehab units to the Atlanta PHA, with a yearly contract authority of approximately $1,267,000, and an overall budget authority of approximately $19,000,000.

30. On or about November 6, 1986, the defendant DEBORAH GORE DEAN signed a letter addressed to Co-conspirator Five, regarding his client Plateau Mortgage Company.

Culterwood and Springwood and Other HUD Projects

31. In and around November 1986, Co-conspirator Five asked defendant DEBORAH GORE DEAN for an allocation of 200 Mod Rehab units for Co-conspirator Five to use in Dade County, Florida, and defendant DEBORAH GORE DEAN agreed to direct 200 units for the benefit of Co-conspirator Five's developer/client.

32. On or about December 1986, Co-conspirator Five confirmed a consulting agreement with Dean Witter Housing & Real Estate Finance Corporation whereby he would provide services on a number of projects, including Woodcrest, a California retirement service center that had been rejected for mortgage insurance by the HUD Regional office.

33. On or about December 30, 1986, the defendant DEBORAH GORE DEAN asked a HUD employee to look into a decision made by the HUD Regional office rejecting a Woodcrest application for mortgage insurance.

34. On or about January 15, 1987, the defendant DEBORAH GORE DEAN met with Co-conspirator Five.

35. On or about January 20, 1987, Co-conspirator Five wrote a letter to the defendant DEBORAH GORE DEAN regarding a co-insurance application under HUD's

Section 223f co-insurance program for the Atlanta developer for whom he had earlier obtained the 200 Mod Rehab units.

36. On or about January 29, 1987, the defendant DEBORAH GORE DEAN had meeting with Co-conspirator Five.

37. On or about February 11, 1987, the defendant DEBORAH GORE DEAN wrote a note to a HUD employee about the review of the application for mortgage insurance for Woodcrest after the application received another rejection at HUD Central.

38. On or just before February 13, 1987, the Metro-Dade PHA was caused to write a letter to the HUD Secretary seeking an allocation of "two 0-bedroom units, one hundred and fifty-three 1-bedroom units, and forty-eight 2-bedroom" for a total of 203 Mod Rehab units, the exact configuration of the total of two projects known as Springwood and Cutlerwood, which were under development by Claude Dorse and Jim Mitchell, Florida developer/clients of Co-conspirator Five.

39. On or about February 18, 1987, the defendant DEBORAH GORE DEAN wrote a note to a HUD employee regarding the Woodcrest mortgage insurance application stating, "If we have a way to do it--why can't we?"

40. On or about February 19, 1987, the defendant DEBORAH GORE DEAN had a meeting with Co-conspirator Five.

41. On or about February 19, 1987, Jack K. Jaynes, the Woodcrest owner/developer, had a conversation with an agent of Co-conspirator Five in which Co-conspirator One was identified as the stepfather of the defendant DEBORAH GORE DEAN.

42. One or about February 20, 1987, Co-conspirator Five received a $40,000 check from his Florida developer/client in connection with the 203 Mod Rehab units for the Springwood and Cutlerwood Projects.

43. On or about March 27, 1987, Jack K. Jaynes had a conversation with an agent of Co-conspirator Five in which Jaynes was told that Co-conspirator Five would "Go to Debbie -- explain story."

44. On or about March 27, 1987, Co-conspirator Five received a check for $25,000 from his Florida developer/ client in connection with the Springwood/Cutlerwood Projects.

45. In and around early April 1987, in the District of Columbia, the defendant DEBORAH GORE DEAN asked Co-conspirator Five for $4,000.

46. On or about April 1, 1987, the defendant DEBORAH GORE DEAN met with Co-conspirator Five in the District of Columbia.

47. On or about April 7, 1987, the defendant DEBORAH GORE DEAN made a list of PHAs that were to receive distribution of the limited number of Mod Rehab units available, and she included 203 units in the exact bedroom configuration as the units sought by the Florida client of Co-conspirator Five for the Springwood and Cutlerwood Projects.

48. On or about April 7, 1987, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated the award of 203 Mod Rehab units to the Metro-Dade PHA.

49. On or about April 8, 1987, the defendant DEBORAH GORE DEAN met with Co-conspirator Five.

50. In and around the end of April 1987, in the District of Columbia, Co-conspirator Five gave defendant DEBORAH GORE DEAN a check dated April 29, 1987, in the amount of $4,000.

51. On or about April 29, 1987, the defendant DEBORAH GORE DEAN, wrote a note cautioning another HUD official to be "careful" about disclosing certain facts about the Mod Rehab funding process.

52. On or about April 30, 1987, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated an official notification of the award to the Metro-Dade PHA of 203 Mod Rehab units, with a yearly contract authority of approximately $1,350,000, and an overall budget authority of approximately $20,000,000.

53. On or about May 6, 1987, defendant DEBORAH GORE DEAN deposited into her personal bank account the $4,000 check given to her by Co-conspirator Five.

54. On or about May 21, 1987, the defendant DEBORAH GORE DEAN facilitated and caused to be facilitated a decision in HUD Central reversing the HUD Regional office and allowing a mortgage insurance application for Woodcrest, a project of Co-conspirator Five's client, to go forward.

55. On or about May 28, 1987, Co-conspirator Five entered into a retainer fee agreement for $10,000 a month with his Florida developer/client doing business as First Florida Equities, Inc. ("FFE"), for the future, including services for "any and all HUD programs of interest of FFE" and the obtaining of "HUD approval for FFE in any of the

HUD programs FFE is interested in, such as (but not limited to) the HODAG program."

56. On or about June 15, 1987, the defendant DEBORAH GORE DEAN met with Co-conspirator Five.

57. On or about June 26, 1987, Co-conspirator Five received a check dated June 26, 1987, in the amount of $10,000 from his Florida developer/client in connection with the 203 Mod Rehab units directed to the Metro-Dade PHA for the Springwood and Cutlerwood Projects.

58. On or about July 21, 1987, the Metro-Dade PHA sent a letter to Jim Mitchell regarding the Cutlerwood and Springwood allocation of 203 Mod Rehab units, notifying the developer of preliminary approval of the developer's receipt of the 203 Mod Rehab units caused by the defendant DEBORAH GORE DEAN to be directed to the Metro-Dade PHA.

59. On or about July 21, 1987, Co-conspirator Five received from his Florida developer/client FFE, a check dated July 22, 1987 in the amount of $128,000, representing final payment of his $203,000 fee for obtaining the 203 Mod Rehab units for the Cutlerwood and Springwood Project.

60. On or about September 2, 1987, the defendant DEBORAH GORE DEAN met with Co-conspirator Five.

61. On or about September 16, 1987, the Atlanta PHA sent a letter to Nick Bazan, the Atlanta developer/client of Co-conspirator Five, notifying the developer of preliminary approval of the developer's receipt of the 200 Mod Rehab units caused by the defendant DEBORAH GORE DEAN to be directed to the Atlanta PHA.

62. On or about June 1, 1992, as a result of the foregoing acts of the defendant DEBORAH GORE DEAN and her Co-conspirators, HUD was caused to deliver the most recent of the monthly Mod Rehab payments for federal monies in connection with the Springwood and Cutlerwood Projects, in the approximate amount of $410,000.

The Nomination of the Defendant DEBORAH GORE DEAN

63. On or about November 4, 1986, Co-conspirator Five added his name to a telegram sent to the Director of White House Personnel supporting the defendant DEBORAH GORE DEAN for the position of Assistant Secretary of HUD.

64. In or about June 1987, the defendant DEBORAH GORE DEAN submitted a "Statement for Completion by Presidential Nominees" to the Senate Banking Committee in connection with her nomination to the position of Assistant Secretary of HUD for Community Planning and Development. In that Statement, the defendant DEBORAH GORE DEAN represented that to her knowledge, "no investments, obligations, liabilities or other relationships exist which might involve potential conflicts of interest" with the position to which she had been nominated.

65. In the course of the August 6, 1987 confirmation hearings about the defendant DEBORAH GORE DEAN before the Senate Banking Committee, the defendant DEBORAH GORE DEAN testified that, among other things, Mod Rehab awards were made by a panel at HUD that "goes solely on information provided by the Assistant Secretary for Housing," that she had "never given or approved or pushed or coerced anyone to help any developer," and that "[i]t's a tremendous waste of time" for developers to meet with HUD employees regarding Mod Rehab funding.

In violation of Title 18, United States Code, Section 371.

COUNT SIX
Scheme to Falsify, Conceal and Cover up

* * *

2. On or about August 6, 1987, in the District of Columbia and within the jurisdiction of this Court, the defendant DEBORAH GORE DEAN, in a matter within the jurisdiction of a department of the United States, to with, the Senate Banking Committee, knowingly and willfully falsified, concealed and covered up by a trick, scheme and device material facts she had a duty to disclose, as hereinafter set forth.

3. On or about August 6, 1997, defendant DEBORAH GORE DEAN testified under oath before the Senate Banking Committee.

4. It was material to the Senate Banking Committee's inquiry (i) to obtain the defendant DEBORAH GORE DEAN's testimony free from concealment and falsification, (ii) to determine how HUD's Mod Rehab Program had been and was being administered, and (iii) to determine what role the defendant DEBORAH GORE DEAN played in the administration of that Program.

* * *

6. In response to Chairman Proxmire's inquiry set out in the preceding paragraph, the defendant DEBORAH GORE DEAN willfully and contrary to the oath she had taken to testify truthfully, testified under oath as follows, believing and knowing the underscored material statement not to be true:

"Well, to my knowledge, we do not put out a notice of funding availability on the mod rehab program. I have never seen us do one since I've been at HUD.

"The program, instead, works that the field offices receive applications from public housing authorities. They are rated and ranked, sent to the regional administrator, who forward them to the Assistant Secretary for Housing, Federal Housing Commissioner.

"The Assistant Secretary for Housing puts together the applications and, with the Deputy Assistant Secretary for Multifamily Housing, comes to some conclusion as to where they believe these funds could best be used.

"Once again, they bring it to a panel of people, which is the Under Secretary, the executive assistant to the Secretary and the Federal Housing Commissioner. *That panel goes solely on information provided by the Assistant Secretary for Housing.* He gives us the information and the three of us make recommendations to the Secretary, who is the person who approves those units."

In violation of Title 18, United States Code, Section 1621.

COUNT EIGHT
Scheme to Falsify, Conceal and Cover up

* * *

2. On or about August 6, 1987, in the District of Columbia and within the jurisdiction of this Court, the

defendant DEBORAH GORE DEAN, in a matter within the jurisdiction of a department of the United States, to wit the Senate Banking Committee, knowingly and willfully falsified, concealed and covered up by a trick, scheme and device material facts she had a duty to disclose, as hereinafter set forth.

3. On or about August 6, 1987, the defendant DEBORAH GORE DEAN under oath before the Senate Banking Committee.

4. It was material to the Senate Banking Committee's inquiry (i) to obtain the defendant DEBORAH GORE DEAN's testimony free from concealment and falsification (ii) to determine how HUD's Mod Rehab Program had been and was being administered, and (iii) to determine what role the defendant DEBORAH GORE DEAN played in the administration of that Program.

* * *

6. The defendant DEBORAH GORE DEAN had a duty to answer Chairman Proxmire's inquiry set out in the preceding paragraph truthfully and to disclose how HUD's Mod Rehab Program had been and was being administered and what role she played in the administration of that Program.

7. In response to Chairman Proxmire's inquiry set out in paragraph five, the defendant DEBORAH GORE DEAN testified as follows:

> "I have never given or approved or pushed or coerced anyone to help any developer. Those funds go directly to the public housing authority.

"As a matter of fact, I have regular meetings with public housing authorities where I tell them that they should be dealing directly with developers. A lot of times, public housing authorities send developers to HUD. And they meet with people all over the building.

"It's a tremendous waste of time, and I let them know that; because those funds go to the public housing authorities."

8. In fact and in truth, as the defendant DEBORAH GORE DEAN then and there well knew, the statements set forth in the preceding paragraph were knowingly and willfully made as, and pursuant to, a trick, scheme and device to falsify, conceal and cover up material facts, to wit, the actual manner in which Mod Rehab funding decisions were made, and her actual role with regard to those funding decisions.

In violation of Title 18 United States Code Section 1001.

COUNT TEN
Scheme-to Falsify, Conceal and Cover up

* * *

2. On or about August 6, 1987, in the District of Columbia and within the jurisdiction of this Court, the defendant DEBORAH GORE DEAN, in a matter within the jurisdiction of a department of the United States, to wit, the Senate Banking Committee, knowingly and willfully falsified, concealed and covered up by a trick, scheme and device material facts she had a duty to disclose, as hereinafter set forth.

3. On or about August 6, 1987, the defendant DEBORAH GORE DEAN testified under oath before the Senate Banking Committee.

4. It was material to the Senate Banking Committee's inquiry (i) to obtain the defendant DEBORAH GORE DEAN's testimony free from concealment and falsification, (ii) to determine how HUD's Mod Rehab Program had been and was being administered, (iii) to determine what role the defendant DEBORAH GORE DEAN played in the administration of that Program, and (iv) to determine the facts surrounding a HUD-funded project known as Baltimore Uplift One.

5. In the course of her testimony at the time and place set forth in paragraph two of this Count, the defendant DEBORAH GORE DEAN was asked the following questions and gave the following answers:

> THE CHAIRMAN: "Now, Ms. Dean, can you tell us about your involvement in the deployment of Section 8? That's the moderate rehabilitation funds for a project known as Baltimore Uplift One?
>
> "According to the Washington Post in a story dated October 1984, there was an abuse of some $17 million; according to HUD staffers in Baltimore, these funds came from the Secretary's discretionary fund.
>
> "And since you worked closely to the Secretary at the time, what can you tell us about that problem?"
>
> MS. DEAN: "Senator could you give me the date again?"

THE CHAIRMAN: "Yes. The date is October 1984."

MS. DEAN: "I was executive assistant to the Secretary at that time. I've never heard of Baltimore Uplift One. It was a moderate rehabilitation project?"

THE CHAIRMAN. "What's that?"

MS. DEAN. "You said it was in the mod rehab program?"

THE CHAIRMAN. "Mod, section 8, moderate rehabilitation. That's right."

MS. DEAN: "There are two explanations why I would not know it. I might not know the name or those funding decisions were made prior to my appointment in June, and the funds were not released from the Department until October.

"But I've never heard of Baltimore Uplift One."

6. The defendant DEBORAH GORE DEAN had a duty to answer Chairman Proxmire's questions set out in paragraph five truthfully and to disclose her knowledge of the HUD project known as Baltimore Uplift One and the facts surrounding that project.

7. In fact and in truth, as the defendant DEBORAH GORE DEAN then and there well knew, her statements set forth in paragraph five were knowingly and willfully made as, and pursuant to, a trick, scheme and device to falsity, conceal and cover up material facts, to wit, her knowledge of the

HUD project known as Baltimore Uplift One and the facts surrounding that project. In violation of Title 18, United States Code, Section 1001.

COUNT TWELVE
Scheme to Falsify, Conceal and Cover up

* * *

2. On or about August 6, 1987, in the District of Columbia and within the jurisdiction of this Court, the defendant DEBORAH GORE DEAN, in a matter within the jurisdiction of a department of the United States, to wit, the Senate Banking Committee, knowingly and willfully falsified, concealed and covered up by a trick, scheme and device material facts she had a duty to disclose, as hereinafter set forth.

3. On or about August 6, 1967, the defendant DEBORAH GORE DEAN testified under oath before the Senate Banking Committee.

4. It was material to the Senate Banking Committee's inquiry (i) to obtain the defendant DEBORAH GORE DEAN's testimony free from concealment and falsification, (ii) to determine how HUD's Mod Rehab Program had been and was being administered, and (iii) to determine what role defendant DEBORAH GORE DEAN played in the administration of that Program.

5. In the course of her testimony at the time and place set forth in paragraph two of this Count, defendant DEBORAH GORE DEAN made the following statement:

> "As a matter of fact, no moderate rehabilitation units that I know of, unless they were sent directly by the Secretary, have ever

gone to my home State of Maryland, simply for that reason -- that I sat on the panel."

6. The defendant DEBORAH GORE DEAN had a duty to testify truthfully.

7. In fact and in truth, as the defendant DEBORAH GORE DEAN then and there well know, her statements set forth in paragraph five were knowingly and willfully made as, and pursuant to a trick, scheme and device to falsify, conceal and cover up material facts, to wit her knowledge of the award of Moderate Rehabilitation units to projects in the State of Maryland. In violation of Title 18, United States Code, Section 1001.

A TRUE BILL

Foreperson

Arlin M. Adams
Independent Counsel

TRANSCRIPTS

[Transcript 2592 - 2595]

-- I remember that I was with them [John Mitchell and Dean's mother] the night that they met and I had -- it had been a long time since I saw my mother sort of act like that. I mean she was acting more like a woman than someone who had been a widow for many many years, and she was twirling her necklace and I remember thinking to myself

MR. O'NEILL: Judge, is this Mod Rehab? A I'm sorry.

THE COURT: All right, I'll overrule the objection.

MR. WEHNER: Judge, I move to strike.

THE COURT: All right. I'll strike the comment by counsel.

Ladies and gentlemen of the jury, listen to the testimony and don't worry about counsels comments.

MR. WEHNER: Your Honor, could we approach?

THE COURT: Sure.

(Bench conference)

MR. WEHNER: Your Honor, that statement by Mr. O'Neill is particularly out of line, given the testimony that this jury has heard on direct with regard to the relationship between Miss Dean and John Mitchell and her family and I would ask that you admonish the Government to restrain his impulses.

MR. O'NEILL: I have sat through three days of [Tr. 2593] hearsay upon hearsay, of leading a witness through completely irrelevant nonsense and I finally have said something. Mr. Wehner and his client throughout the Government's case would laugh and guffaw at various statements made by witnesses. I have not engaged in this. When I hear about her mother curling her hair --

THE COURT: She said her necklace.

MR. O'NEILL: -- like a school kid, this is absurd, Judge, it has nothing to do with this case and if they want to get on with it, after four days the patience of the Government is wearing a bit thin.

THE COURT: Well, the impatience of the Government should not be exhibited by comments that provoke laughter from the jury at a time when the defendant is testifying about a principal unindicted co-conspirator in the case and her relationship with him which I think is relevant, and the Government is relying on the testimony of the person closest to her mother as the tie as to why she took certain actions that you allege shows a conspiracy exists although we have no direct evidence.

I agree that much of the other evidence that we've been hearing is hearsay and I've given the defendant a lot of scope and latitude because of the nature of the charges in this case, which to the Court's [Tr. 2594] mind, as I said before, present some difficulty and I have given the defendant the benefit of my concerns but I don't think on either side it's appropriate.

I didn't notice the defendant's counsel going unremonstrated against by the Court when he would make comments about particular things. So I would think on both sides the admonition stays, but I do think the kind of

comment when she's testifying about a crucial allegation in the case., I think her mother's response to this man and what she believed the relationship was and what her motivation would be is very important. So restrain yourselves, and if you want to object come up and object and I'll hear it.

MR. O'NEILL: Your Honor, the Government will abide obviously by your rulings. I don't have too much choice even if I disagreed with you since you are the Judge.

However, the Government will notify the Court that I will start objecting on legal bases such as leading and non-relevant matters.

THE COURT: That's fine. I don't mind.

MR. WEHNER: Thank you, Your Honor.

(Bench conference concluded)

THE COURT: All right, ladies and gentlemen, once again we'll ignore inappropriate comments of [Tr. 2595] counsel. We're here to try this case and we'll have no bons mots tossed at each other. All right.

[Transcript 2761 - 2762]

A. . . . Never had a conversation like that with him ever.

Q. Never?

A. Never.

Q. Not to this day?

A. Never.

MR. O'NEILL: I didn't hear the answer, Your Honor.

MR. WEHNER: lever.

MR. O'NEILL: Thank you.

THE COURT: All right, I'll sustain the objection to counsels remarks, once again, on the government's side. It was an unnecessary comment.

MR. O'NEILL: I apologize.

[Tr. 2762]

THE COURT: The case is not here to be made fun of but to be tried. I don't like that conduct.

[Transcript 2776 - 2777]

[Tr. 2776]

(Jury out.)

THE COURT: Let me see counsel at the bench, please. (Bench conference on the record.)

THE COURT: Mr. O'Neill, let me ask you if that had been a black defendant on the stand with a white jury, would you be making the same kind of smart comments you've been making with a white defendant and a black jury?

MR. O'NEILL: Do you think I'm making those racially?

THE COURT: No, what I'm impugning is that you're making these comments with a white defendant and a black jury which you wouldn't be doing with a black defendant and a white jury, and I resent that. I think it may be a basis eventually for the bench to take a look at this case.

MR. O'NEILL: Your Honor, if I may, I understand what [Tr. 2777] your concerns are. That happened numerous times in the government's case, numerous times, and the record will reflect that. It happened one time now after the question was asked and answered, asked and answered.

THE COURT: This is the third time I recall you doing this, and I've warned you before, all right?

MR. O'NEILL: Second time, Judge. I don't want to -
THE COURT: Second or third.

MR. O'NEILL: I don't want to quibble. All right.
(Recess from 2:45 p.m., to 9:30 a.m., October 14, 1993.)

[Transcript 2900 - 2902]

THE COURT: This is cross-examination. Do you know so and sop and she gives a long explanation, but I don't think comments to the jury -- it's not a question of a remark to the Court as an objection to evidence. It doesn't have any business in the courtroom. That's all.

MR. O'NEILL: Well, I apologize.

THE COURT: There's no evidentiary value. It means nothing except to influence the jury about something that's not appropriate and that's my concern.

I just wanted to make it clear yesterday and I don't want to rehash this again because it's over, it's water over the dam, but I'm not sure the record reflected what my concern was adequately and I don't want to leave an unfair impression to Independent Counsel. Miss Dean had been answering a question, had raised her voice and spoken very loudly and repeated a couple of times she never meant to do something. That's the general context, that's not totally accurate, but said never, never it very loud several times. The remark of counsel for the prosecution was I'm sorry, I didn't hear you, and holding your hand to your ear which [Tr. 2901] caused the jury to laugh and snicker. I'm not sure that would appear in the record.

The prosecutor did not use all its strikes in choosing jury and I have no question that that's a problem with choosing jury at all. My concern was that there was an insensitivity at least and maybe something much more. These remarks are to influence the jury. We're here to give the defendant a fair trial and that's what we're all here to do.

MS. SWEENEY: Your Honor, I haven't addressed this. I've been very quiet but I guess I have to say that I do

feel that when we were questioning witnesses and when we were making arguments to the Court Mr. Wehner and Mine Dean were permitted to ridicule us, to heckle us, to make faces at the jury.

THE COURT: I didn't notice that. I think that's a two-edged sword and maybe it was raised too long. I think there's a very strong obligation on the prosecutors in terms of conduct. Unfortunately sometimes that doesn't apply to defense lawyers.

MR. WEHNER: Your Honor, I quite frankly don't know of anything in my conduct with one exception at this trial that the Court called me on that could fall into that category and I would like to know right now specifics if we're going to get into that kind of [Tr. 2902] contest because I take --

THE COURT: We're not going to go into it anymore. You do have facial expressions.

MR. WEHNER: True.

THE COURT: It's a little different than making remarks to a jury in the middle of an examination. All right. Let's go on.

CLOSING ARGUMENT

[Transcript 3372-3431]

[3372]

As I said in opening statement, Ladies and Gentlemen, this case is about power and how it can corrupt. It is about a public official using her public office for her private gain. It is about looking out for yourself and not others.

Instead of looking out for the interests of people who needed public housing, of families with low income, defendant [Tr. 3372] looked out for her own family and her own interests, and then when confronted with what had happened, when it was going to be revealed, she lied about it.

May it please the Court, Judge Hogan, counsel, Ladies and Gentlemen of the Jury. As I told you in opening statements, there are only two times when I can speak to you. One was opening statement; one is closing argument, so this is the second time. I'd like to say good morning.

THE JURORS: Good morning.

MR. O'NEILL: I'd like to thank you, Ladies and Gentlemen, for your attention you've shown throughout the course of this trial, and I'd like to thank you on behalf of the defense and for the Court. We recognize that it was a long trial. It's a lengthy trial. Sometimes there's delays, lots of documents, which sometimes are very hard to follow, and they make for a long, long trial. You've been attentive, and we've appreciated that, because it's very important that you listen to the evidence and that you render a verdict dispassionately based on that evidence.

The government made certain statements in opening statement to you, and you remember that a few weeks back. The government has proven each and every statement that was made in that opening statement.

I'd like to bring your attention back to a chart that we used, and we used that very early on during the opening [Tr. 3373] statement. And you'll recall that as I pull it out, it was a breakdown of the various charges in this case. And there are twelve charges in this case of which the defendant is accused, and we went over those, and the evidence that was brought forth by the government was to detail these charges, and you'll see what they are.

Count 1 was a conspiracy. It's an unlawful agreement. His Honor will instruct you on the law after myself and Mr. Wehner have a chance to argue what this case is about, and we will tell you a conspiracy is a unlawful agreement. That is what it is. It's a partnership in crime.

You'll notice there are three separate conspiracies, and you'll recall what those were. Conspiracy 1, that's where the defendant was dealing with John Mitchell, someone she considered very close to her, almost like a father; Louis Nunn; Jack Brennan, Richard Shelby. Count 2, conspiracy, she's dealing with Andrew Sankin, Thomas Broussard, once again Richard Shelby. Count 3, Louis Kitchin.

And remember, that was the natural lead-in to Count 4, the $4,000 check that we'll talk very much about. That's an illegal payment, or what's called a gratuity. His Honor will instruct you on that.

And then the rest are the various perjury and concealment charges, the lies, the cover-up. Remember, Counts 5 and 6, that the information on funding decisions goes solely on [3374] information provided by the assistant

secretary for Housing. We've proven that's false. "I have never given or approved or pushed or coerced anyone to help any developer. It's a tremendous waste of time." Again, we've proven it is false.

Baltimore Uplift: "I've never heard of Baltimore Uplift One." I'm sorry if you can't see it. "But I've never heard of Baltimore Uplift One."

And then finally, "As a matter of fact, no moderate rehabilitation units that I know of, unless they were sent directly by the secretary, have ever gone to my home state of Maryland simply for that reason -- that I sat on the panel." Again, that was false.

And I will go charge by charge, Ladies and Gentlemen, but that is what the government proved in this case, and you heard from an assortment of witnesses about what the government proved.

The defendant has also presented evidence in this case. You heard from the defendant herself, and she testified for several days. There are tow completely different stories that you heard, the government's on one side and the defendant's on the other, and this is a kind of case where the two can't be reconciled. It's one or the other. They are totally inconsistent.

You are the judges of the facts. His Honor will instruct you on that. It is your determination which story is [Tr. 3375] credible, is believable. His Honor tells you the law. You take that law and apply it to the facts that you've heard at this trial, during this trial. As the evidence in this case has shown, only one version can be credible. Only one you will find believable.

You might remember during the opening statement I said what a jury brings more than anything else to this courtroom is your common sense and your good judgment. Each of you are regular people, who live everyday lives, deal with everything that goes on in regular lives. You know how to assess the credibility of witnesses. You know how to listen to the evidence. You know when someone's telling you the truth, and you know when someone's not telling you the truth. That's as you sit there.

And they also say about a jury each person has their own individual experiences in their lives, but together the twelve jurors, the collective whole is greater than each part, because all of your experiences then are put together during your deliberations, and through them, the jury makes its decisions, and that's why it important that you work together in a team concept and decide what the facts are in a particular case.

[3376] And I think a great example of that would be Government's Exhibit 28, and you might recall that's a letter from the defendant to John Mitchell -- to Louis Nunn, excuse me, at John Mitchell's place of business. And you might recall it's dated July 5, 1984, and the importance of this -- and remember, you admit what you can't deny; you deny what you can't admit. She has to tell you she wrote this letter. She cannot deny that. It's here. You'll see it.

But instead -- and she writes in this, "This confirms my conversation with General Mitchell," again, that she spoke to him about the project -- and that let me assure you that all the units will go to Arama.

She has to admit that. It's in black-and-white, as I said during opening. But how does she deny it? Because that document in and of itself shows she's dealing with John

Mitchell on Arama. She's assuring a set number of units. So how do you deny that?

You say, "Well, I got that information from someone else." So you go outside of the document. You say, "Maurice Barksdale told me that."

Now Maurice Barksdale didn't testify here that he told her that, but that's what you say. You go around it, because you cannot deny what's in black-and-white, what's on these documents, written before this trial ever started. And in fact, it's written in 1984.

[Tr. 3377] The government's case was built brick by brick. It's like a house. You've got to start with a strong foundation, so what do you do? You put the witnesses on from HUD. You explain what the program is, the Moderate Rehabilitation Program. People very early on, people like Chris Greer and Madeline Hastings, they came on, they explained what this case was. They explained what moderate rehabilitation was all about.

Then you heard from the people on the inside, the assistant secretaries, Maurice Barksdale, Janet Hale. You heard from people who worked with them like Susan Zagame.

All of those witnesses told a story. And they told you what transpired at the Department of Housing and Urban Development from the years 1984 through 1987.

That's the evidence that was presented brick by brick, and that's how you build a case. You must make it strong so that it withstands scrutiny, so that it withstands your scrutiny, so that it makes sense, that it passes your judgment.

[Tr. 3378] How do you believe it?

You remember during opening statement, I said this is a white collar crime, and in that respect, it's very different than what we encounter in our day-to-day lives. We all know about street crime. And it's just the emphasis is different.

You have a burglar. How does somebody get caught under burglary? Well, somebody might see him, you call the cops, the cops respond, the person is arrested. Well, if there is a trial, there are eyewitnesses. It's that person who saw it who says, "Yes, that's the person who saw it who says, "Yes, that's the person I saw coming out of that apartment." That's how you prove it.

The same with car-jacking. Somebody sees somebody take the car, they have a gun, they call in. The police arrest hie, they identify him, the eyewitness testifies.

In a white collar case, it's very different, because it depends on the position of the person. What renders it different, it's a person who has a position of authority, a position of trust, such as this, executive assistant at the Department of Housing and Urban Development, and abuses that trust, misuses that position.

How do you show that? Well, we did have witnesses, but the problem with witnesses is you're never quite sure very often totally what they're saying, so you use documents, and the documents are made back in 1984, '85, '86, and '87, and those documents established what was going on. The documents keep [Tr. 3379] people honest. It's very difficult to go somewhere different with your story when the documents are there.

This is a classic case of a government not working for all of us. Our government is to be we the people, by the people, for the people, not for certain people, not for prominent, powerful people, but for all of us.

And the problem in a white collar crime is when you have the public official not working for all of us, it undermines our faith in our government, and we see what really happens sometimes, not the way it's suppose to operate, and we see a public official working to help certain people, friends and family, because it benefits that public official, not helping all of us, and as you heard from Melvin Adams, the ex-director of the Dade Country Housing Authority, what happens is the local priorities get pushed under, because you do whatever you can to get those units, and in this case, the units would only go to people who knew the defendant.

A public official cannot serve two masters. There is no way to do that. If you work for the United States government, you must have, the undivided loyalty of that employee must be devoted to the United States. There is no other way. That person works for all of us. We pay that person's salary. They must work on all of your behalf, not just the people that they want to work for.

What is the government's case, Ladies and Gentlemen? [Tr. 3380] What has the government proved here? I would like to show you charts and utilize those charts to show you exactly what the government has proved, and I hope everyone can see it from where they're seated, and if not, please let me know.

Count 1 -- let me move it down just a little. Count 1, what has the government proved in Count 1? You remember this wa very early on in this trial. We started in Miami with a developer by the name of Aristides Martinez. Mr. Martinez wanted to get mod rehab units, and he was asked, "Why didn't you just get them from the public housing authority?" and he told you can't get what they don't have. They couldn't give it to him.

As Sherrill Nettles-Hawkins told you, the PHAs became a ghost entity. They were no longer involved in the equation that we talked about were a developer would go to a local public housing authority, the local public housing authority would go to the area office, the region, the headquarters, and the money would filter down. The reason it was set up that way, as Madeline Hastings testified, who designed the program, was because of the need to set priorities in an area.

Every area has those. Is there a problem? Is there a crack street you want to close up? Is there a particular apartment building that's really troublesome, and if you rehabilitate that apartment building, the entire street or neighborhood will benefit?

None of those things could happen anymore, because the [Tr. 3381] developers, wherever their property was, would hire prominent, powerful people, and they displaced the local public housing authority.

How could a smaller developer hire these powerful people? How could they pay that amount of money? Because as you'll get into on Arama, Mr. Martinez paid $425,000 just to hire a consultant to get him to mod rehab units. How could a small developer do that?

You'll remember what Mr. Mel Adams said: "There were lots of things that we tried to do: encourage minority developers to associate with them, encourage the local priorities to be set and followed, but can't do that if these monies have to be paid and you have to know certain people."

So we have Arama. We have Art Martinez using Louie Nunn, the ex-governor of the State of Kentucky. And remember his testimony, Ladies and Gentlemen? Do you

remember how hard he had and what a difficult time he had explaining what he got paid for? He kept saying, "I was hired to advise and to ensure there were no problems."

"Well, were there any problems?"

"No, I don't remember any problems."

He couldn't even explain to you what he had done for that money other than to contact John Mitchell, who then contacted someone in headquarters.

And then again on South Florida the same way: He [Tr. 3382] contacts Jack Brennan, who then contacts someone in HUD headquarters.

Mr. Martinez paid 425,000. Now we'll go into it again later on, but you've heard a lot about, well, local politicians backed these projects, and that's what it was. It was political.

Well, if a local politician backed it, why didn't Martinez get him to write a letter and save $425,000 that he had to shell out? Because of course, local politicians send letters. They do that all the time. The question is ware they worth anything? Mr. Martinez apparently didn't think so. he had to pay $425,000 in order to get it.

And how was that money split up? Well, we know 75,000 or it went to John Mitchell. What did John Mitchell do? he spoke with the defendant, Deborah Gore Dean, as we saw in that letter. That's what happened.

Arama get funded. We've seen the letter. The letter is dated July 5, 1984, and Ms. Dean unequivocally states in that letter, she writes, "I've spoken with General Mitchell about the Arama partnership.

You heard her on the stand try to fall back from that, but how can you change that? She spoke to him. She writes it.

These documents, Ladies and Gentlemen, come from HUD. We can't make them up out of whole cloth. We subpoena them, we get those. It's in her handwriting. She stipulated that's her signature at the bottom of it. It's her document.

[Tr. 3383] The purpose of this gives you a sort of timetable, chronology of what transpires on the various projects. And you'll note how Martinez contacts Nunn at Mitchell's business address. Again, you see that on the letter. We know Ms. Dean worked at Global Research. She knows what that business is. She uses it as a reference, and she worked there. She worked for Mr. Mitchell for a while. She knows what that is.

You see a consulting contract between Martinez and Nunn, and you've seen all of that go into evidence, the hundreds and thousands of dollars, all of the checks going back and forth.

Martinez asks Nunn to get 293 units. We showed you the notes from John Mitchell. Eventually the fee is increased. It's increased an additional $50,000. You were able to see those documents as they went into evidence.

And here we go to that letter, July 5 of 1984. She tells Nunn at Mitchell's business address that Arama will definitely get the units. She assures him and they says, "I hone your partnership will be a viable venture." Could it be any clearer that she's dealing with John Mitchell?

On the very next day, you might recall Governor Nunn writes a letter back, and he writes a letter to Art

Martinez and said, "It has been read to me from my Washington office that we will definitely get 293 units." Mr. Martinez wants to know that. He shelled out $425,000. He wants to get going. He told you about that, about being a developer with joint ventures, you have [Tr. 3384] to lock in certain things. $425,000.

Do you think for a moment he would have spent that money if he wasn't going to get those units? Think about what would happen if he doesn't get those units. He just lost $425,000 for nothing. Obviously, he's paid $425,000 to hire somebody with influence, somebody with connections in Washington, somebody who knows the right people, an ex-governor and an ex-attorney general of the United States, and they know the defendant, Deborah Gore Dean.

You will here testimony that other people might have been involved in this. The government doesn't have a problem with that. There might be other people. We already know that Mr. Philip Wynn, who testified, had done illegal things. He's pled guilty. We knew that Silvio DeBartolomeis did illegal things. He's pled guilty. We know Thomas Demery did illegal things. He pled guilty.

We know there were other people committing crimes at HUD during this time frame, but that's not what this case about, and that should not be your focus. This case is whether the defendant, Deborah Gore Dean, committed the crimes listed on Chart No. 1 over there which she is charged. That is your focus in this particular case.

And it goes on. You'll note the 16th, a rapid reply for 293 units to Metro Dade. All the witnesses told you that's the first funding document. It doesn't get signed for another [Tr. 3385] eleven days, and who signs it. Mr. Barksdale. He told you he had no idea John Mitchell was involved in this project. He didn't even know John Mitchell, never met John

Mitchell, and ultimately he left Washington because he was tired of putting up with what was going on there.

And this is a very interesting date, July 18. You saw that document as well. Deborah Dean has a document hand-delivered to Global Research. It is found in John Mitchell's documents after his death, and it's a hand delivery, a request for special service. I'm sure you'll remember that.

And the reason for that, the importance of that is she's taken the time to have a HUD messenger or some messenger service deliver this at HUD expense to John Mitchell. He has asked for that. Why else would she be sending it to him? They're communicating, he's asking about Arama. He wants to know what's going on, because he stands to make $75,000 on it. He's interested. That's what's going on in Arama.

Look at this: The HUD Atlanta office on the 27th of July is notified that 293 units are going to Metro Dade. That's over 20 days after Deborah Dean personally notified Louie Nunn that they will get them units. Is that the way our government is supposed to operate, Ladies and Gentlemen?

You heard Maurice Barksdale talk about that. He'd never seen that happen before. That was a very odd letter. He doesn't know how that letter could have been written unless [Tr. 3386] somebody knew something that he didn't know.

Now you start to see what was being paid. John Mitchell received a little over $8,000. And when you see Mitchell meeting Nunn, those are the calendar entries. You'll have the opportunity when you deliberate on this case to go through the documents. You can look at John Mitchell's calendar, Deborah Dean's calendar, and they're in evidence, and they will show what we've been saying with the various people.

Again, scheduled to meet, scheduled to meet. Martinez puts 275,000 in escrow for Louis Nunn, $275,000. And Nunn pays Mitchell $75,000 for Arama. He gets paid. We've seen the checks. They've been placed in evidence.

Louie Nunn, John Mitchell, influence peddlers, people who make their living selling influence to buyers, but they can't sell that influence unless they have somebody on the inside, because they don't have a product unless there is someone abusing their position of trust within the United States government, doing what these people are requesting, and that's the defendant.

South Florida I, again, as we saw with so many of these documents, they just change slightly. South Florida I, you hear from an individual by the name of Jack Brennan, John Mitchell's business partner. He goes to see the defendant, Deborah Gore Dean, on this project. He goes to see her at HUD. Now he explains, "Well, she's the only person I knew."

Louie Nunn later explains to you John Mitchell was out [Tr. 3387] of the country. Does that make a little more sense to you, Ladies and Gentlemen, that John Mitchell is out of the country, they want to get moving on South Florida I, so Jack Brennan goes over there?

And we saw a government exhibit in which Art Martinez writes a letter to Governor Nunn that 219 units should be sent, and they carbon-copied Jack Brennan. In fact, Ms. Dean told you he brought that letter when he went to see her.

Do you remember what we told about earlier about coded references? 219. Previous he's asked for 293; now he's asking for 219. Why the exact numbers? Because he's paying $425,000 the first time. He's paying 219,0000 the second

time. If 275 units come down for another project, he's in hot water. He's lost a lot of money.

He wants to make sure that he's getting those units, and he wants to avoid any confusion as to whose proposal wins. It's a given. There's no doubt who's going to get those units.

You've heard from the local PHA. Do you remember Patricia Sharifi testified that Miami's got problems? Miami is a city with a big, big influx from South America and Central America. So they've got problems. They need units. They can't get them on their own. They explained that, Mr. Adams explained that and Ms. Sharifi.

So they were willing to play ball, they were willing to go along with it. Why? They wanted the united, and if the [Tr. 3388] developers told them, "We can get unites if you do it our way," "Hey, we'll do it."

That's what they told you. They were not impeached on that. Nobody said that's not what's happened in Miami.

So when Art Martinez asked for 219 units and they're funded, they're coming to him. So there is no gamble that he's paying out $219,000 on this project on an off chance he's not going to get them. It's definite. He's getting those units. They're going to him. That's not a project-specific award? It's going right to his project.

And you'll see on South Florida, as this shows what happened. The defendant Deborah Gore Dean's own calendar schedules a meeting with Brennan. You heard from Brennan. He went to see her. The meeting took a couple minutes, he told you.

And another thing about influence peddling consultants: We talk about consultants. There's nothing wrong with consultants, you'll hear that. I expect even the Judge will charge on that. We're not saying there's something wrong with a consultant when they can, if somebody has a small business, maybe they don't know how to do the bookkeeping, so you bring in a consultant, he tells you how to do this, learn how to do this, save you some time.

These aren't consultants that know anything about mod rehab or housing. Jack Brennan told you he didn't know anything about it, yet he stands to make $109,000 by simply meeting with [Tr. 3389] the defendant once or twice. It's influence peddling. It's not having some expertise that Mr. Martinez needed. The only thing Mr. Martinez needed was someone at Washington to get him the units, because he couldn't do it out of the local PHA up here on the line that just disappeared, when brings that letter, what does Ms. Dean write on it? "Send to Housing." She stipulated it's her handwriting.

She will tell you she just put it through normal channels, but we know what normal channels were at that time. She was the one making the decisions. She was the decision-maker. We'll know it from the handwritten list later. Of course, it went through normal channels. She granted 219 units to South Florida.

Martinez calls Nunn. Susan Zagame, remember she testifies, she specifically writes on her handwritten notes which are in evidence, which you'll have, "219 units," right next to it and there's two allocations to South Florida., both 96 and 219, it's written in, "Need letter."

They don't even have a letter yet from the local public housing authority. Miami hasn't even asked for units yet, because Miami is out of it. What's going on is it's these

people who know each other going around the process, going right up to headquarters.

So what happens? Miami sends the letter, because as Patricia Sharifi told you, the developer would say, "Hey, we need [Tr. 3390] a letter. Send it up there quick." That's what they did.

You'll see on the 18th the defendant calls the HUD funding control office, say, "No more changes to mod rehab," her word on it, not Secretary Pierce's. We'll get into that later.

Mitchell's partner, Brennan, calls Nunn. Mitchell schedules lunch with Dean. You'll see John Mitchell, Deborah Dean, there's a couple entries on her calendar where they have lunch together.

Martinez calls Nunn, checking on the status of the project. You see that continues up until the time Nunn bills Martinez for $219,000. That's what he getting, $1,000 a unit. Do you remember that testimony? You've heard it time and time again. That's what they charged, $1,000 per unit. It's a pretty important piece of commodity.

You see it goes down, Nunn sends $109,000 to Global Research. We put those checks in evidence. You saw them. They have had $109,000 for a couple-minute meeting with the defendant, Deborah Gore Dean.

Mitchell get $10,000 from Global two weeks later. Right below that, you'll see Mitchell and Brennan each receive $50,000 from Global Research for consulting.

Interestingly, you'll recall these phone conversations. Shortly thereafter, the defendant, Deborah Gore Dean, calls Governor Nunn. Why is she call Nunn? Because at this stage, she's up for the assistant Secretary for Community

Planning and [Tr. 3391] Development and she needs some help. She wants people to beck here.

So who does she reach out for? She reaches out for the people she's helped, prominent, powerful people, people who's word is a big deal here in Washington, D.C. politics, and now it's the payback time. Now she calls on him. He will support here.

And that is the connection between Louie Nunn, John Mitchell, and defendant Deborah Gore Dean. All arrows lead to her. She is the one controlling, directing the awarding of the mod rehab unit. What does Governor Nunn make? $502,169 -- excuse me, $502,169.86. And he couldn't even explain to you what he did. You'll remember his testimony on that. He couldn't tell you anything.

Now you still have Park Towers, and Park Towers is interesting, because that, too, is Miami, and you'll remember he testified a long time ago, Martin Fine, the developer. Mr. Fine is a prominent attorney in Miami and also well known in the housing field, did many things in housing.

Mr. Fine puts an application in to local public housing authority in mod rehab. He's not going anywhere with it. He's not getting anything. Why isn't he getting anything? Because the local public housing authority has no power. Finally, Mel Adams tells him that.

Even Mr. Fine, a prominent lawyer down there with a big [Tr. 3392] housing background, can't get anything. He, too, must hire a consultant. So he hires Eli Feinberg, somebody he knows. Well, Feinberg is local. He needs somebody in D.C., so they hire Richard Shelby.

Again, are they hiring a consultant on housing matters, a guy familiar with housing and the housing industry and

what the Mod Rehab Program is? No, they're hiring a political consultant. They're hiring an influence peddler, a guy who can go to the right place, knock on the right doors, and get the right answers.

And why will they listen to him? Because he can do something for them. It's a big you-scratch-my-back-I'll-scratch-yours. That's what this is about. It's a little club, and if you're not a member of the club, you're out of luck.

What happens? Shelby meets Mitchell for lunch. A contract is put in, 150,000. What happens with that contract? Does it stay at 150,000? No, we heard testimony it went up to 225,000. It's a valuable commodity. What's it for? It's for 142 units. Now the price has gone up. It's no longer $1,000 an unit; it's closer to $2,000 an unit.

What do we see during this time? We have the defendant congratulating Shelby on his new job. We have her scheduling lunch with Shelby, actually meeting him for lunch, because sometimes there was a lot of talk about whether it was actually meeting for lunch or not.

Well, the calendars can only tell you what was going to [Tr. 3393] happen. We have the backup documentation such as on this one, where it's an expense account with her name on it. Then we show she actually met for lunch. Who meets for lunch this time? Shelby and Mitchell. The three of them are now meeting.

The very next day, he sends her information on Park Towers. It's in evidence. Again, it's in black and white. It can't be disputed. The defendant is saying, "I didn't know he was working on these projects. He didn't ask me for anything." It's in black and white. This is back in 1984, way before she says he spoke with here.

And it goes on. Dean schedules a briefing with Shelby. Dean schedules a meeting with Shelby. She's constantly meeting with him.

And you'll see a HUD rapid reply for 266 units. You might remember that gets faxed almost immediately to mr. Fine down in Miami. Why? Because the contract called for a $45,000 payment to go out. That's what this case is about -- money, Ladies and Gentlemen, and what people will do with money.

HUD Atlanta is notified 266 units. This is after Rick Shelby knows. This is after Martin Fine has found out. The HUD people don't learn until days later. That's how the system has been perverted by these individuals, prominent people in this little circle.

Again we see another luncheon date and payment of $45,000.

[Tr. 3394] MR. O'NEILL: Again, this correspondence going back and forth. Dean, Shelby, all of this coming back and forth at this timeframe. Shelby's employer paid him $10,000. He gets some up-front money already. We're going to find out he gets $50,000 on Park Towers. Mr. Shelby said he got nothing on Park Towers. Absolutely nothing. Yet he gets 50,000. Why, ladies and gentlemen? It's for access to the defendant Deborah Gore Dean.

And you'll see how it keeps going. Continuing meetings on the Park Towers project, and I won't even comment, you'll see there's just a lot of entries. Mitchell meeting with Rick Shelby. Again, Dean, Shelby scheduled to have lunch. Once again they're going to have a meeting.

Now, you'll see, Shelby send a telegram. You saw that telegram. When the defendant wants something she reaches

out to Richard Shelby, to Louie Nunn, to Louis Kitchin. Because she's reaching out to people that can help her now. She's helped them. They'll help her. They'll get her job as Assistant Secretary.

They sent something to the White House. Can an average person do this, send something to the White House and it will be listened to? It's got to be prominent people, people that the White House will [Tr. 3395] listen to.

You heard Jack Brennan. On his own he called up some individual named Ken Duberstein to find out what's going on with the nomination. They call the White House. They can find out what's going on. They're important people.

Again, all the meetings back and forth. Shelby thanking Dean for the time we spend over the last few years.

Then you have Fine paying $250,000 to Shelby. And Richard Shelby, Eli Feinberg and the Keefe Company getting $175,000 for one project, and John Mitchell on the projects with Mr. Martinez and project with Martin Fine made $242,000 and some odd amount of money and all because they know the defendant Deborah Gore Dean.

What does she get out of this? John Mitchell is like a father to her. He is as close as he comes. Later on, in her testimony she says, well, I didn't really become close to him until after I left HUD.

Ask yourselves, ladies and gentlemen, when you go over that, it that credible? When she's writing letters to him in 1983 saying Dear Daddy? Would you be calling somebody Daddy is you're not close to him?

She told you that he was her mentor. He was [Tr. 3396] her brother's mentor.

But the story keeps changing. It changes on what question you ask. But there is no doubt in these documents, documents written in 1983, that's her dad, and that's what she's calling him.

Later on when confronted on the stand, I wasn't close to him at that time.

That's what she's getting out of this. John Mitchell, who is very close in a family relationship to her practically, is making money and, as she told you, he was not doing all that well. He had problems. He was financially in very bad shape. Well, that $242,000, I think he was doing pretty good. That's what count one is.

Count one is the situation in which these individuals made a lot of money through their relationship with the defendant Deborah Gore Dean, lots, lots of money.

I'd like to go on to two count.

Count two, ladies and gentlemen. What do we have on count two.

Again, the scenario is almost exactly the same. Names change, projects change, but what occurred is almost exactly the same.

Now you have a different individual, Andrew [Tr. 3397] Sankin.

You heard the defendant describe that Andrew Sankin was not like a friend to her. That he really didn't do too much with her. Well, that's belied by the documents, the repeated entries in here calendars. The fact that he was working for her on Stanley Arms. The fact that she stated on the witness stand he was on the family payroll.

That's why she asked him to do one legal matter. Do you remember that? She said I figured as long as he was on the family payroll I might as well ask him to do that. Well, if he's on the family payroll how is she directing projects toward him? That is self dealing. They aren't interested in these projects. And you didn't hear any of these people, going back to count one for a second, that went down and checked out where Park Towers was, where South Florida One was, where Arama was. Who that was benefitting. How that was helping the neighborhood? There was no testimony as to that, because it didn't exist. They had never seen these projects, Jack Brennan said. He never went down to Florida. He had no idea where these projects were. He was interested in making money on his connections and then getting out of it.

This one starts, as you recall, with John [Tr. 3398] Rosenthal. John Rosenthal was the developer from Pennsylvania. John Rosenthal was looking to get exsection rents for the Necho Allen hotel.

What did he do? He applied to HUD. You'll see that in the documents. What happened when he applied to HUD? He was turned down. Turned down. So what does he do? He applies again. He's turned down again. Twice Mr. Rosenthal is turned down.

Why is he turned down? HUD made a decision.

So what does he do? He hires Andrew Sankin. He hires a consultant. A person connected to the defendant Deborah Gore Dean. He agrees to pay him 10,000 if he can get the exception rents. And a meeting is set up.

Again, you remember from the testimony, Miss Dean admits there's a meeting. She must. It's in black and white

again. She says, well, there were other people there. Other people were involved.

Well, John Rosenthal didn't get this meeting before he hired Andrew Sankin. And you'll hear again with John Rosenthal that Senators in Pennsylvania wrote letters saying he, it would be nice if Mod Rehab units go for this particular project. Well, some of those letters are written way before Andrew Sankin gets in the picture. He didn't get the Mod Rehab units until he [Tr. 3399] hired someone who had the influence, the ability to get to the defendant Deborah Gore Dean.

And remember, Andrew Sankin, that guy just got out of school. Just gets out of school. And look at the kind of money he's making.

And you remember, when he testified, Miss Dean made much of the fact that he must have drank six gallons of water. Did he look nervous to you up there? He kept drinking and drinking. He asked Joe to get him another drink of water. The guy kept drinking. He was so nervous up there.

How does he justify getting out of school and making $229,000 for doing nothing.

And you heard people like Tom Broussard saying they've got to cover for this guy. He's taking to developers on their plane rides. He doesn't know what he's doing. And he's making this kind of case. It's really unbelievable.

So what happens? Andy Sankin gets John Rosenthal in to see Deborah Dean. Bang. Exception rents. They'll say Secretary Pierce signed off on them. Secretary Pierce didn't sign off on them. The autopen was used. Again, you only have her word that Secretary Pierce authorized the signature. It was not his signature. It's an autopen.

[Tr. 3400] Regent Street. What happens on Regent Street. John Rosenthal wants 26 units. He gets 13 and 13. How does he go about that? The documents with regard to John Rosenthal couldn't speak any louder, no matter what would happen. On this project he writes to Andrew Sankin. What does he say to him? I want 26 units. "I would very much appreciate the opportunity to meet with Deborah and get a feeling for the lay of the land and get her advice as to what specifically we should be doing in this connection." Is there any doubt who John Rosenthal is dealing with, and who is the consultant that he's using. It's Andrew Sankin.

Is there any doubt that Deborah Dean knows that he's dealing with Andrew Sankin? This is on Necho Allen. "Dear Deborah, Andrew has informed me of the very good news." He talking about Andrew Sankin. That's what he's doing. He's hired somebody, someone with influence to get him what he needs as a developer. He can't get it on his own.

The Secretary --- Senators might be writing all the letters they want, it's not helping him. He needs to get into the door. He has to pay someone to get into the door.

That's not the way our Government is supposed to operate. It's supposed to be for all of us.

[Tr. 3401] Look at the defendant, she is writing back to John Rosenthal, "Please excuse the tardy reply. I was under the impression that we had resolved your question when we last met. I know that on several occasions Andy Sankin has broached the subject of Mod Rehab units for Pennrose Properties with the Department." How does she know that unless he talked to her?

On the stand you've got a different story, totally different story, but not in black and white, not in the documents. They speak for themselves.

He's dealing with her. That's how he's making his money.

And does John Rosenthal get his units? Yes, he does for Regent Street. Does Andy Sankin make money? Absolutely. And, still, as I said in opening, he's still making small amounts. He got $10,000 for Necho Allen. He gets $10,000 for Regent Street.

Now we get to Alameda Towers, and Alameda Towers, as I told you in the opening statement, is when it really starts to change.

Andy Sankin and Tom Broussard tell you that they get 150 units and they go shop around for these 150 units. They look for a buyer. And probably the most honest person that's testified at this trial was a Mr. James Wilson. And you might remember, he was [Tr. 3402] a very brief witness, but he's the guy who Broussard came to and said I've got 150 units for you. Actually he told him 300 units. And he wants a joint venture. Not only does he want to be paid $1,000 per unit, he wants 50 percent of the development that Mr. Wilson has.

Mr. Wilson, a big businessman, says, well, I want to know the deal. Where did you get those, how did you get those? And he says it's none of your business, and Mr. Wilson says, hey, if I'm' going to do business with you I want to know how you get them. And Broussard doesn't tell him. He said he's just got an in. What does that say? He knows he's got a valuable commodity. He's trying to find a buyer for his project. That's what that is. And Mr. Wilson wants to know if he's going to be giving him hundreds of thousands of dollars he wants to know, hey, Jack, what's the deal? Where are you coming from? I want to know what's going on.

Mr. Broussard doesn't want to tell him because he knows he's not supposed to have those units. He's got them in hand.

And the defendant tells you on the stand a different story. She says Sam Pierce told her, even though she doesn't know anybody, go out and find people to get those units. Does that make sense? Go out and [Tr. 3403] find people for those units, otherwise they'll be recaptured.

You've got the local Public Housing Authority in Puerto Rico. I've never been to Puerto Rico, but I can guarantee you Puerto Rico needs housing units, it's like anyplace in this country or any Commonwealth, you need units. They have poor people, they have rich people, they have middle class people. The local Public Housing Authority could have easily taken care of these 300 units. They didn't need Tom Broussard, an international lawyer from Los Angeles, as he told Mr. Wilson, to come down and find a buyer for these units.

What about Cleofe Rubi? Remember him. He was the developer on that project. The man who came in, had a very heavy Spanish accent. The big talk with him, he had some 50-odd foot boat and he said it's a very big boat. I guess a 50-something foot boat is very big.

Mr. Rubi is a successful businessman in Puerto Rico. He paid Tom Broussard $150,000, and do you remember what he said? I bought the units from him. He wasn't my attorney. I didn't use him for anything else. He had the units and I had to buy them. Do you think a person like Cleofe Rubi would pay $150,000 if he didn't have to? Why did he pay that money? He's a successful [Tr. 3404] businessman. Being a successful businessman, he's probably a smart businessman.

You had a change to judge his credibility and see what he's like. Would he pay that unless he had to? He had not other way of getting those units, and in fact, in fact, he had worked the other side. He had gone through the Senators like D'Amato and the person you heard of, Joe Monticciolo, up on the region covering New York and Puerto Rico, and he thought he had his own 150 but he couldn't get that other 150 he absolutely needed unless he paid money, and Broussard and Sankin were holding that.

And who did they deal with? They dealt with the defendant Deborah Gore Dean, although she denies it at this time. The documents speak for themselves. They tell, and on visual presenter you'll see that, the documents, one after the other, showing a chronological order of how this went, the funding documents, the meeting with Broussard, the meetings with Sankin.

And don't forget all through this timeframe he's managing the Stanley Arms apartment. The defendant would have you believe she did him a big favor. Maybe he did make some money. But so did she and her family. He's managing an apartment building for her while she's doing HUD business. Could you think of a more egregious [Tr. 3405] example of self dealing? She's benefiting herself.

He told you Bill Morgan, who she knew, who she admitted on the stand knowing, was one of his employees. He would give him a bonus every time he got money on Mod Rehab because it allowed him to do so. That's where he's making his money. $230,000.

Now, interestingly, how did Broussard and Sankin hook up? Well, Sankin calls him out of the blue. Broussard said he doesn't know him. What does Broussard do? He calls the defendant Deborah Gore Dean because Andrew Sankin has told him I know the defendant Deborah Gore Dean.

Broussard then talks to the defendant in this case. He speaks with her and checks out whether Sankin is a good enough guy to work with and she says, yes, he's a good enough guy to work with. Where is she coming with this. Why is she involved with who is picking who? And the important thing about that is she even admits to putting together Shelby and Sankin.

She's working for HUD, ladies and gentlemen. You can't serve two masters. She's working for the United States Government, for we the people. Not for Richard Shelby, not for Andrew Sankin, not for Tom Broussard. She's working for all of us.

And what happens on Eastern Avenue. And [Tr. 3406] Foxglenn? Those are two projects in Maryland. Both in Maryland. Both Mr. Shelby and Mr. Sankin tell you that they deal with the defendant on Eastern Avenue. They deal with her on Foxglenn. Foxglenn is before Eastern Avenue and comes first in time.

You'll hear from the defendant when she testified she didn't know Shelby wanted anything on any of the projects until Eastern Avenue. That's not true. Both of them told you on Foxglenn they were dealing with her. He's meeting with her. Her calendars are replete with entries, meeting with Richard Shelby during this period of time. They're not talking about what he's interested in?

They weren't friends before her position as Executive Assistant to HUD. You will hear from her they're not friends any longer. They're only friends when she's Executive Assistant. Ask yourself does that make sense they they're not talking about Mod Rehab, about these projects while she's Executive Assistant and having lunch with him on a very frequent basis as she says?

What does she tell both of them? She tells them she's very interested in Maryland. Not like she told the Senators at the confirmation hear, I wouldn't do anything with Maryland. She tells them [Tr. 3407] she's very interested with Maryland. Why? Because she want to run for public office some day. And you heard form another witness, from Pamela Patenaude yesterday, another witness to whom she said that she was looking for higher office. She was looking for bigger things. And that is why she allowed herself to be corrupted at HUD, to misuse her position and not care about the people that she was supposed to be taking care of, but taking care of herself.

And that's what this is about. Count two. It is once again about favoring certain people, people with influence, people who could sell that influence by having a connection in the Government. Someone who would listen to them and do their bidding, and in return what does she get?

Well, we see what she gets. Family enrichment. He's running Stanley Arms. In her own words, as she said, he's on the family payroll. The building turns from a loss to a profit under his management. He does what's called, you heard about it, the rent increase. He does this document. He states to you in his testimony it's probably got a market value of about $20,000. He never charges her. He asks for payment. She doesn't give him anything. He doesn't want to kill the goose that laid the golden egg. He [Tr. 3408] doesn't say anything. That's why.

Mr. Sankin takes her out to lunch, out to dinner. You heard a lot of testimony that his receipts were fabricated, that they're lies. Well, as you go through them you'll see one receipt goes right on point.

And isn't it coincidental that all of his receipts are lies, all the Lance Wilson receipts are lies? Lance Wilson is actually a very good friend. All of Linda Murphy's receipts

are lies? Remember Linda Murphy, one of her closest friends? I showed you that on an affidavit. And she said one of her closest friends. All of Russell Cartwright's receipts are lies. All of these people.

Look through her calendars. She's meeting with them for lunch all the time, but yet they're all lies, all attempts to deduct business expenses and commit crimes.

Count three, ladies and gentlemen --

UNKNOWN PERSON: Excuse me, could you tell me if this Courtroom is where I --

THE COURT: You're interrupting a Court proceeding. You ask the Marshal your question.

All right, Mr. O'Neill.

MR. O'NEILL: Count three. Again, the names [Tr. 3409] change, the projects change, but the scenario is exactly the same.

The new influence peddler is Louis Kitchin. The new person with connections to the defendant is Louis Kitchin and, again, he knows nothing about Mod Rehab. he's not a housing consultant. He's a guy that runs political campaigns but he's a big shot and other people think he's a big shot and he can get things done.

But what does he do? Ladies and gentlemen, count three, Louis Kitchin. He's the next influence peddler. He's the next one we see with access to the defendant Deborah Gore Dean, and you'll see from the documents in evidence, although it's not on here, it begins with a developer by the name of Jack Jennings, who has a retirement center in San Diego, California.

What does Jack Jennings need? He wants some assurance. The only way to do this is a HUD assured program. He must get that in order to build his retirement center. So he applies to the L.A. Office. It's denied. He applies to the Regional Office. It's denied. He applies to headquarters. It's denied. He appeals headquarters. It's denied.

Then Louis Kitchin goes and he talks to the [Tr. 3410] defendant Deborah Gore Dean, and you'll see from the documents she then asked Tom Demery look into this, see if an independent analysis isn't warranted, and what happens? HUD reverses its position. That's not even Mod Rehab. It has nothing to do with Mod Rehab, but it shows what happens.

Here's a man who can't get anything done. he gets denied everywhere but when he has Lou Kitchin in his corner, things start to change.

Then you go -- even before this $203,000 for Metro-Dade you go to Atlanta. And Mr. Kitchin asks the defendant for 200 units for Atlanta. You remember Nicholas Bazan, another very short witness, a developer from at Atlanta. Mr. Kitchin told him, I can get units. I know the defendant Deborah Gore Dean and I can get units from her. So Mr. Bazan agrees that if he gets the units to Atlanta he will take them. He will buy them.

Mr. Kitchin says I'm going up to meet with Dean in a couple of days. I need a letter from the Housing Authority very quickly. Please get it for me. Bazan has his employee, you might remember David Westcott, he testified for maybe ten minutes, he went, got the letter, brought it back, brought it to Kitchin's office. Kitchin brings it up with him. He asks for 200 units for Atlanta.

[Tr. 3411] A couple of days later, just a couple of days later, as that will show, the units come down. The letter

is dated 27th. On the 30th, three days later, the rapid reply for 200 units to Atlanta.

And the documentation for that is in the defendant's own handwriting. You might remember when she was testifying -- it's a handwritten list, it's her handwriting. She admitted to it. She stipulated to it. She wrote that out, 200 units.

They go down to Atlanta. They're down in Atlanta. Mr. Bazan agrees not to pay a cent unless they go to him. You might remember what he said. He didn't think he had the political influence to be assured that they were coming to him. Luckily, he didn't pay because the City of Atlanta found a better developer. They didn't give it to Mr. Bazan. So we don't have it on this chart.

What does Mr. Kitchin do? He goes to Miami. In Miami he knows the local PHA. So he goes there and he finds Claude Dorsey and Jim Mitchell, developers on a project, Springwood and Cutlerwood, and he tells them again I can get units for your projects. They agree to pay him money. He goes up.

He told you he met with the defendant Deborah Gore Dean. He asks for the units. The units were sent [Tr. 3412] down. Again, we have a handwritten list by Miss Dean in which it says 203 units to Miami.

Now, you'll again remember what I said, admit what you can't deny, deny what you can't admit. We have the handwritten list that says 203 units to Miami. It's in here handwriting. She stipulated to it. But she said, well, Tom Demery was telling me what to write and I wrote it down. Ask yourself is that credible or is that just a way to deny what's in your own hand? The units were awarded. $203,000 go to Lou Kitchin.

Count four, ladies and gentlemen. $4000. You've heard a lot of testimony about the $4000. The $4000 can be nothing but what the Government has claimed it is. You've seen the check. It's dated April 29, 1987. It was put into Ms. Dean's account. It written, the endorsement, right on the back of the check.

In early May the check clears into here account. We went over lots of details about that. That check was given to her by Mr. Kitchin and it was endorsed right on it as a loan.

As we showed, Miss Dean was in tremendous financial problems at that time. She had taken out several loans. She owed money on a Diner's credit card. She was in very, very bad financial straits. You've seen her checking accounts. She was getting [Tr. 3413] insufficient funds charges all the time. Her balance was always very low. She needed money. She asked Mr. Kitchin for that money and he gave it to her. She had bought a piano just days before.

As the documents on the visual renter will show, she received that $4000 in between the time that a meeting was held on the Cutlerwood-Springwood project for 203 units to the time that the 185 was signed by Thomas Demery, the then Assistant Secretary for Housing.

That $4000 was a gratuity for and because of the official acts that the defendant performed on behalf of Louis Kitchin. There can be no other explanation for that.

Now, the rest of the counts I'll go into later on because they involve lies and attempts to conceal and, as I said very quickly at the beginning, the Government has proved that.

What about the defendant's case? What has the defendant shown to you in this trial? Her entire case rests on her credibility, her believability.

The first thing you must ask yourselves, ladies and gentlemen, is, is the defendant a credible witness? Did she tell you the truth?

And His Honor will instruct you on the law and [Tr. 3414] you must decide whether a person is credible or not. How do you do that? As I said in opening statement, just as you would judge somebody in a day-to-day life experience. Does that testimony square with your common sense? Does it make sense to you? Does it pass your good judgment?

Let's start with the $4000. Did she tell you the truth about the $4000 when she said she was going to use that money because it was coming to her to decorate Mr. Kitchin's apartment?

Mr. Kitchin, first of all, never owned an apartment. Second of all, the check, the defense will dispute the date on the check, but you look at the check and see if it doesn't say to you 4-29-87. That check was written after the apartment was sold. The apartment was sold on I believe it was April 20th, 1987. Before that check was ever written. And regardless of how you read that date, and when I look at it, it looks like the 29th, but it's up to you, you determine, that check was written after it was sold.

And more important, ladies and gentlemen, do you remember on direct examination before we had a chance to cross-examine Miss Dean she stated on June 15th she had a complete definitive recall of what had happened. She was driving with Hunter Cushing and [Tr. 3415] Lou Kitchin to pick up a car and on the way back she's with Mr. Kitchin. She remembered exactly where she was and what building

was there. What the conversation was. That her brother was antsy about selling the apartment. He wanted her to find out what was going on with the apartment, her exact words, my brother was antsy. Someone else was living in his apartment by June 15th. the closing was on June 10th.

Mr. Kitchin did go to look at Gordon Dean's apartment. That's not in dispute. In fact, he went there in January of 1987.

But remember the way Miss Dean put forth the evidence to establish that the $4000 was to decorate an apartment? She called Susan Withington, the woman who testified yesterday. Why was Miss Withington called? To say that she was the broker who held that apartment, and so she was the realtor you'd have to go through. For Gordon's apartment, not any other apartment. For Gordon's apartment.

They never told you that the apartment had been sold. That there was a contract. That there was a [Tr. 3416] closing. It wasn't until Special Agent Batts called up Miss Withington and she said yeah, it was sold already and there was a contract for sale and a closing. It wasn't until Special Agent Batts found this out that we brought forth this information to this jury. She never testified to that on direct examination on the defense case. That information was not given to you.

Why not, ladies and gentlemen? Because it would have blown that whole theory out of the water. It wouldn't have made any sense. It was a lie. It didn't make sense.

The other thing is when I started cross-examining Miss Dean with that, she's a very bright person, not what she told you. She told you Lou Kitchin wanted to take the closet and make it a wet bar or a dry bar or something because he

wanted it to be an office, and he didn't like the color in the kitchen. It was aloud color. So that was going to be painted.

And if she's supposed to be a decorator, wouldn't each apartment be different? I'm no decorator, but if you're going to decorate an apartment and be paid for it, aren't you going to look at what the color in the kitchen is? If it's a particularly loud color [Tr. 3417] you're going to have to decorate it a certain way or repaint it. It only makes sense. And if you're going to put that dry bar in , that's what she was being paid for.

And remember, what was the going on at that time? What was happening? We're talking April of 1987. She was under investigation, an investigation she asked for to be Assistant Secretary for Community Planning and Development. They were looking into her background. She needed that money to make sure that she was not having these insufficient funds. That she had enough money to pay her bills.

And don't forget the testimony of Jack Jennings. You might recall him. He was the lawyer from Atlanta who when Mr. Kitchin first told him that he was thinking of lending here money he thought he was crazy. He said you don't do that. He didn't believe that Mr. Kitchin would do such a thing and even Mr. Kitchin told him, well, I'll rip up the check. He said, well, that doesn't do any good because they have other ones on file at the bank.

[Tr. 3418] Mr. Jennings' testimony is very important on that point because it corroborates what happened. Mr. Kitchin loaned her money. She had bought things such as the piano and needed money. But she told you a completely different story.

But why do we keep going? Why do we keep asking questions? Because it was filtered with lies. Her entire testimony just kept changing.

I'd like to go over some of them now to show you where she said one thing once and then another thing later on.

She had no Moderate Rehabilitation dealings with Lou Kitchin. Period. Unequivocal. That's what he said to you. Do you recall that? Mrs. Sherrill Nettles-Hawkins told you quite something different. She told you that she heard her on the phone after Mr. Kitchin had said, hey, where is my Mod Rehab units, she asked the defendant, and the defendant said tell him they're coming, or something to that effect. Mrs. Hawkins told you correctly on that. That's a lie, [Tr. 3419] ladies and gentlemen. Both sides can't be right. And Miss Dean has told you Mrs. Hawkins wouldn't lie. So, therefore, Miss Hawkins is telling the truth on that. Then Miss Dean lied.

No idea John Mitchell was a consultant. That was his occupation. He was in Global Research International. That's what they did for a living. She put on that he was a consultant. I had to prod her on that and pry, and it's not easy to just keep asking questions, going into this stuff, but when you're not getting a truthful answer you have to pry, and finally she admits, yes, he's a consultant, which I won't even -- I might as well. She wouldn't even admit being a consultant until I showed her a consulting agreement that she had signed and she said, well, if you want to say what that is. I don't testify here, ladies and gentlemen. It's what the defendant testifies. She was a consultant when she left. She did what she complained everybody else was doing. They left HUD and became consultants. That's what she did when she didn't get the job she wanted.

Shocked that John Mitchell made any money. Remember, she went into great length about that. That she was absolutely shocked. And the day the I.G. Report came out she called Special Agent Alvin Cain, who was at [Tr. 3420] HUD at the time, and said I'm shocked. I can't believe it. I though you were my friend. You should have told me John Mitchell was making money. You'd better be able to defend what you said if you can't I'm going to hold a press conference and I'm going to do something, I'm going to rant and rave. That's exactly what she told you.

So we had to call in Special Agent Alvin Cain for two minutes' of testimony. And you heard Mr. Cain. It didn't happen. It didn't happen like that. And he remembered Marty Mitchell picking up the report, bringing the money, but it didn't happen. Then they asked him a bunch of questions about the Wilshire Hotel, and you could see Mr. Cain had no idea what they were talking about. We had to bring him in just to show that she lied about that.

Lance Wilson. She said Lance Wilson gave 600 units to Joe Strauss for Puerto Rico. That's here friend. I asked her questions about that. She denied it. Then she said, well, I'm saying Lance Wilson gave 600 units. I don't know who Lance Wilson is, but it doesn't matter if I do or not. That is not the testimony. It must come from her.

So we had to call in Special Agent David Bowie, and remember Special Agent Bowie? He's been 22 [Tr. 3421] years with the FBI, before that six years as a schoolteacher, before that with the United States military in Vietnam. Mr. Bowie says that's when she told me. She fingered Lance Wilson, her friend, who was giving the 600 units to Joe Strauss.

Now, it might seem like a small point, ladies and gentlemen, but she denies it on the stand. She lies when it

benefits her. When it's a benefit. When she can say I didn't know John Mitchell was a paid consultant, she lies about that. We have to show if she's going to lie on that will she lie on anything else?

I mentioned earlier, not close to John Mitchell until after she left HUD. All the letters were written Dear Daddy. Five years earlier. Come on, ladies and gentlemen. Does that square with your common sense? Does that make any sense at all? She's trying to talk her way out of it.

She denied that the HUD driver had driven here to lunch with John Mitchell. There was a stipulation that Mr. Reynolds, if called, would testify. So then she said, well, no, that didn't happen. Besides, Mr. O'Neill, you know he's a weird guy.

So we have to call Mr. Reynolds. Mr. Reynolds comes in. He's got long hair. Good thing I got a [Tr. 3422] haircut, otherwise I guess I'd be a weird guy. He gets up there and he testifies and he says very clearly I remember two specific occasions. Does that sound like a man who is making things up out of whole cloth? He said there were other times, but I remember two specific occasions. Mr. Wehner cross-examined him about, well, didn't you say once a month. And he said yeah. Wouldn't that be 12 times a year time X-number of years? But the guy said two specific occasions.

Why would she lie about a HUD driver not taking her there? Well, the reason is very clear, ladies and gentlemen. The reason it's so clear shy she would lie that Mr. Reynolds did not drive her to lunch with John Mitchell, and there are two particular reasons. The first is, as you heard through her cross-examination, she admonished Hunter Cushing for doing that. And she said taking his girlfriend in a car, you can't do that. You can't use a HUD car, a Government car, for

personal reasons. So she's not going to admit that she did it and she had gotten somebody in trouble for doing it.

And what does she say? You heard the tape and you'll have the transcript and you can hear the tape again. She was asked by Senator William Proxmire at her hearing, the hearing she requested to get this job: The [Tr. 3423] chairman: "Okay, Miss Dean, HUD motor pool records show that you commonly used HUD chauffeurs to drive you to restaurants. During one two-week period in October you were dropped off at the Old Post Office twice, the Hay-Adams, a Connecticut Avenue restaurant, several restaurants on Capitol Hill. Our staffers have spoken to HUD employees who say they have firsthand knowledge that you have used the HUD motor pool for private trips to restaurants. Could you comment on that?"

MISS DEAN: "First of all, that is absolutely not true. Any time I have ever used a HUD car, it was for official business. There are a lot of people in this city that have official business meetings over lunch. It is always their idea. If that is the time they can meet with me, I take them up on that. I have never taken a car to do anything personal."

Then it can only be one of two things. She either met with John Mitchell because it was personal and she lied to Senator Proxmire or it was business, she was dealing with John Mitchell on this HUD business, and she lied to you. It can only -- logically it can only be one way or the other.

That's why she doesn't want to admit that Mr. Reynolds took her -- and I neglected -- that is in evidence, you'll get a chance to look at it. Let me [Tr. 3424] show you something on the visual presenter for a second. There are several pages in the middle of various, various HUD drivers and the name Ron, as you'll see runs, throughout. There are a number of different pages. There are approximately, I don't

know, several pages. Look through it. See how many times Ron's name comes up.

But she told us when I cross-examined her about it that there are many drivers. I don't know who Ron is. Well, Pam Patenaude had no problem remembering that she took trips with her when Ron was driving. But you she didn't want to admit to it, ladies and gentlemen, because she was in a trick bag here. Either it's personal, and she lied to Senator Proxmire, or its business, and she lied to you. Either way it's a lie. It can't be anything else.

Do you remember when I asked her whether John Mitchell had the FBI agent who was investigating her investigated because she didn't like what was going on and she said oh, no, no, no, and then when shown documents she said oh yes, he called the Director of the FBI. He calls the top man in the FBI and the agent is then investigated for doing her background check that she requested. I wouldn't blame her for not admitting to that at the beginning.

[Tr. 3425] Louie Nunn. She told you she did not meet Louie Nunn until after she left HUD. She also said it's possible, as Mr. Nunn said, she met him at Lance Wilson's going away party, can't be sure. Very specific about that. And yet when cross-examined she admits that she told the reporter for the Louisville newspaper that she's known Mr. Nunn since she was a young girl. And then she equivocates and said I might have been mistaken. I shouldn't have said that. But she said it. She keeps changing her story.

She said she only worked at Global Research to plan a party, during her direct examination. You remember that. She worked there two months. All she did was run a party and then she left. So I said to her, well, didn't you write on your resume you were director of public relations for that place? And her answer was, well, yes, I shouldn't have done

it but, you know, John Mitchell said I could. Well, that's false. That's a lie. She wasn't the director of public relations at Global Research any more than I was. She lied about that.

She stated as a reference she used Rich Shelby and she stated she knew him for five years. She talked to him once over the phone but didn't know him. She admitted on the stand that she shouldn't have said [Tr. 3426] that. I was just another lie.

Denied knowing that Andrew Sankin was a consultant. Well, we saw those letters. To believe that you'd have to disbelieve Mr. Sankin, Mr. Shelby, Mr. Broussard, Mr. Altman, Mr. Rosenthal. All saying she knew he was a consultant.

Beryl Altman, another very short witness, he had lunch with her, he's a developer out of Maryland. And dinner. The lunch was set up by Andrew Sankin. Sankin thought it would be a good idea if they met.

She told you, you remember, about John Rosenthal, that he asked her about hiring Sankin and she said it would be preposterous to hire Sankin. Mr. Rosenthal didn't testify as to that. She had an opportunity to cross-examine him about the phone call. That never came out. All you have is her word about this phone call.

What we have, ladies and gentlemen, is a person who lied on the 4000 and continued to lie to you.

You might wonder why we took so long to cross-examine. As I said earlier, after the initial lie you should be able to say that's it. But we wanted to show you that wasn't the only time. Her entire testimony is fraught with lies and deception. It cannot [Tr. 3427] be believed.

And probably the biggest lie of all is what she says about Secretary Pierce. That Secretary Pierce was responsible for all the actions she took. That Secretary Pierce was the person who was behind the funding of all these awards. That it wasn't her. That she was merely some sort of messenger. To believe that, you will have to disbelieve almost everyone.

Maurice Barksdale told you Secretary Pierce was very laid back. Hands off. He delegated authority to people and let them run the show.

Philip Winn, who had been FHA Commissioner before Deborah Dan even go there, said the same thing.

Silvio DeBartolomeis told you that. Susan Zagame. Janet Hale. Tom Demery.

In fact, not one witness told you anything different.

Secretary Pierce, a prominent New York attorney, comes down and is nominated by President Reagan to be the chief of HUD, he's in charge of thousands of employees.

Remember Maurice Barksdale saying how at the beginning he tried to clear his desk every night but it got impossible and he had to start giving it up. He was [Tr. 3428] only Assistant Secretary for Housing, the FHA Commissioner. Samuel Pierce was in charge of everybody. Even Miss Dean admitted, stating in previous testimony, that he would have had to have worked 40 hours a day in order to keep up with all the work. So he relied on other people. He relied on people to do his work and he relied on the defendant Deborah Gore Dean.

She would have you believe that she brought out that there's this adjoining door between his office and her office, so therefore -- and I have no problem that there's a door

separating their offices, but somehow he would sneak in, tell her things, sneak out, and nobody else would see it, and that's why everybody else is mistaken and they all think Sam Pierce is not hands on, but he really was.

Well, you heard he also had a very busy travel schedule. The man traveled all over the place. He wasn't there all the time.

Can you believe what she says about Sam Pierce?

We are not talking about the entire Mod Rehab program. There are a lot of projects. You saw during Miss Dean's direct examination there were literally tens and tens and tens, maybe hundreds of projects that they mentioned as to being funded, and you can bet there were [Tr. 3429] many more that you've not heard about that were funded.

We're talking about specific projects named in this indictment, Arama, South Florida, Park Towers, for count one. For count two, Regent Street, Foxglenn, Eastern Avenue and Alameda Towers. And for count three, the Atlanta projects and Springwood-Cutlerwood project in Miami. We're talking about these specific projects because these specific projects were ones in which Miss Dean had a hidden interest. Ones in which she cared about herself, not others. We are not talking about a project in Santa Clara for battered women where Sam Pierce says they need 19 units. If you can, please do so. We know that document is in there. It has nothing to do with this case. Look for documents that have to do with this case. Look for documents that have to do with this case, with these exact projects when Miss Dean had a hidden interest.

Just as she's deceived you or attempted to do so, ladies and gentlemen, through a series of lies and deceptions she misled Samuel Pierce and didn't tell him of her hidden

interest because if this man who she said is such a fine man and prominent attorney, would he have allowed her to do this where she would have had a hidden interest on these projects? Does that make sense? Does that square with your common sense and good judgment? Ask yourselves about that, ladies and gentlemen.

[Tr. 3430] The best defense is always a good offense. You turn the tables. I'm a little reluctant talking about offense and defense since we all know His Honor likes the Redskins so much, but there's no question that the best defense is a good offense. You take the offensive. And that's what she did.

She came in and told you a story. It doesn't matter that it wasn't true, but she told you a story. A story that at first blush sounded believable. It sounded credible. Until you started seeing the holes. No hole bigger than the absolute lie about the apartment and the fact that it was sold way before this check -- this conversation on June 15th and, as I said, here brother could not -- if he was antsy on June 15th it was how to -- excuse me, it would be how to get rid of the profits they made on selling it. Not on something else. Other people were in his apartment at that time.

It's always someone out to get the defendant.

You remember, on the background check the reason why the background check was almost up, there was a weird FBI agent who kept changing his hair color, one day he's a swat team leader, the next day he's the driver for J. Edgar Hoover, who came up earlier because he was against her family.

She didn't get the Assistant Secretary [Tr. 3431] position because Senator Proxmire was out to get her.

And then, finally, the reason she is here is because Independent Counsel is against her and they're made up of not normal people. Now, that might be true for me, but Miss Sweeney and Mr. Batts look perfectly normal to me.

It doesn't make sense. She has taken the initiative from the get-go. She has lied to this Court, to this jury. Do not believe what she says. It's always someone else's fault.

In order to believe her you have to believe that John Mitchell is lying. That's what she said. He lied to her. Jack Brennan lied to her. Rick Shelby lied to her. Maurice Barksdale is mistaken. Janet Hale is mistaken. Andrew Sankin lied. Lance Wilson, lied. Linda Murphy, lied. Silvio DeBartolomeis, lied. Philip Winn, mistaken. Susan Zagame, mistaken. Thomas Demery, lied. Sherrill Nettles-Hawkins, mistaken. Everybody else lied or was mistaken, but not her.

But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It doesn't square with common sense. It is lies piled upon lies. It crumbles to pieces the minute you look at it.

Now, I know I've run a long time. I apologize [Tr. 3432] for that. But in representing the Government I do need to bring out all the facts. I'd ask you when Mr. Wehner gives his closing argument to be as attentive to him as you were to me and I will have an opportunity to talk to you again, but throughout that listen and wonder why she lied to you throughout her testimony.

Thank you.

THE COURT: All right. Can I see counsel one minute on timing, please?

(Bench conference).

THE COURT: You didn't go into the last count on perjury.

MR. O'NEILL: Yes, sir.

THE COURT: You're going to do that on rebuttal? He may object to that.

MR. ONEILL: I went into them at the beginning, if you recall, and I went over them. They're all just lies.

THE COURT: I just wanted to make sure that you didn't in the excitement overlook it.

MR. WEHNER: I would like Mr. O'Neill not to be able to argue the perjury counts in his reply.

THE COURT: It depends on what you say.

MR. WEHNER: I agree.

THE COURT: That's the only reason I brought

REBUTTAL ARGUMENT

[Tr. 3500-3523]

[Tr. 3500]

THE COURT: Ladies and gentlemen, we'll have the rebuttal argument now by the Government and we'll take our luncheon break and argue the instructions after lunch.

MR. O'NEILL: What did I tell you, ladies and gentlemen? Someone else's fault. It's always someone else's fault. Now it's my fault, it's Miss Sweeney's fault. It's now the prosecutors. That's why we're here. Not the evidence that was brought forth. It's now a personal attack brought by us. You would think you would get mad about your integrity being attacked when you just presented the evidence, because you might remember in opening statement I told you what a prosecutor does is present the evidence. We're merely vehicles by which questions are asked, witnesses take the stand, documents are introduced. Both Miss Sweeney [Tr. 3501] and myself.

But the problem is desperate times call for desperate measures. When your back's against the wall, when it's obvious the Government has put forth all this evidence, the only thing you can do is lie. And when that doesn't work, when the lies are shown to the jury, it becomes a personal attack. And that's what it is. Nothing more, nothing less.

You can't argue the facts of the case. So you argue that someone is out to get you. That the prosecution now is out to get you. Much like the FBI was out to get you on that background check when you asked for that background check because you wanted that job. Much like a United States Senator from the United States Senate was out to get Miss

Dean because he didn't want her for some reason to get the job that she was seeking.

I told you during closing argument that Miss Dean lied to you very clearly and that she lied to you a series of times thereafter and, I repeat, you can take her testimony and throw it in the garbage where it belongs because someone --

MR. WEHNER: Your Honor, I object to that continued characterization.

THE COURT: That's overruled. It's closing [Tr. 3502] argument. It's not facts, it's argument.

MR. O'NEILL: Since Mr. Wehner kept saying that it was not garbage, that I should not have said that, I'm saying that's where it belongs, in the garbage. Because it was a lie, ladies and gentlemen.

And then you must -- as I said earlier, there are two, two conflicting stories here, totally different. Irreconcilable. One or the other is correct. You must base it on what all the witnesses said on one hand or Miss Dean's credibility on the other, and that's what her whole case hinges upon, her veracity, her honesty, her credibility. But she lied to you.

And I'd like to show you at this time since it was put into evidence and never shown to you, the documents that show that, and judge for yourself, ladies and gentlemen. This is a contract of sale for the Watergate apartment owned by Gordon Dean and it is dated April 20th, 1987, nine days before Lou Kitchin writes a check to Miss Dean for $4000. This is Government's Exhibit 556. And you'll see it bears Gordon Dean's signature, dated April 24th, 1987. Then what we have here is the purchaser's settlement statement dated June 10th, 1987. It's a closing. They move in after the closing. And you'll see the purchase price 135,000.

[Tr. 3503] All the necessary signatures. And here's the seller's settlement statement that the seller gets at the time, likewise dated June 10th, 1987. Unequivocal proof that Miss Dean lied to you.

Mr. Wehner read certain parts of the transcript to you during his closing argument, and what did he read to you, ladies and gentlemen? He read to you a passage in which on cross-examination Miss Dean said, well, Gordon had mentally moved away before that at that time and maybe there was going to be another apartment, and you remember he read that at the very beginning of his closing arguments today. Well, that's fine. But that was on cross-examination when I started pressing her on the issue about the apartment, what's going on with the apartment. He didn't read to you what she said on direct examination. Let me read that to you at this time, and you'll remember the direct examination when Janet Whitman testified, when Miss Withington testified the first time, and they never asked her about when it was sold or anything like that.

Let's read that testimony. And this is from Mr. Wehner to Miss Dean.

"Question: When you received -- subsequent to that date when you received the check, did you discover Mr. Kitchin was not going to buy an apartment?"

[Tr. 3504] "Answer: Before he gave me the check?"

"Question: No, after, subsequent."

"Answer: Oh, after. Well, at a certain point, in June of that year, he had, he and I had plans to have dinner, I think, and he came to my office a couple of hours early, and I said, well, I can't leave right now, because I have to pick up my car, and I've already made arrangements to do that.

And he said, well, I'll come with you to pick up your car.

I said, well, it's out in Rockville, but if you want to, come along.

And so he came with me. And I remember Hunter Cushing had agreed to give me a ride out there after work. So Mr. Kitchin got in the car with us, and we went out, picked up my car. And we were driving down Wisconsin Avenue," she remembered very precisely, "and I was discussing with him basically where -- what I had bought and what we were doing and the fact that my brother was getting antsy about, you know, had he signed a contract.

And I was like, you know, you are so slow about this. Are you going to do it, or are you not going to do it or whatever?

And he said, Deborah, I talked to my wife [Tr. 3505] about it and she's decided that we really don't need to buy an apartment in Washington. Maybe we'll do it next year.

And I remember exactly where the car was when he said that. It was, we were driving down Wisconsin Avenue, and it's just where Tenley Circle, the Tenley Theatres are, we were right there. And I pulled the car over to the side lane, and I said, I can't believe this. I mean, I was pretty upset with him because he had yanked me all over Washington, D. C., and I had done all this work for him, and now he's telling me that he had finally discussed it with his wife and that she decided he wasn't going to do it this year.

And I pulled the car over, and I said, well, I said, I'm going to give you the money back that you gave me."

And then it goes on for another page.

Well, what does she say? She says the fact that my brother was getting antsy about, you know, had he signed a contract, and she told you, ladies and gentlemen, that was on June 15th, 1987, that was a lie. That was an attempt to get you to believe her story, but it couldn't be true. On June 15th Mr. and Mrs. Crane are living in that apartment. They signed a contract for that two months earlier, on April 20th. Nine days [Tr. 3506] before the loan to Lou Kitchin.

And then I went over a series of things the other day, yesterday, you might recall. A series of additional mistruths that she told on the witness stand about no Mod Rehab dealings with Kitchin. Never had it. Sherrill Nettles-Hawkins said they did have.

No idea Mitchell was a consultant. But that was his occupation.

Shocked that Mitchell made any money. Al Cain told you, the Special Agent from HUD, that conversation never ever happened.

She denies that Lance Wilson sent the 600 to Joe Strauss in Puerto Rico. Special agent Bowie had to come in here and say that's exactly what she told me.

Not close to Mitchell until after she left HUD. In fact, the record shows she was calling him Daddy five years earlier.

Denied the HUD driver ever drove her to lunch. The records show that he did.

Again, the reason she would lie about that, she was in a trick bag. Either she lied to the Senate about using it for personal reasons or she lied to you about Mitchell doing business with her.

She said she didn't know Nunn until she left HUD. Yet told other people she knew him as a young [Tr. 3507] girl.

Only work at Global to run a party when in fact she wrote Director of Public Relations.

Only knew Shelby for five years -- excuse me, stated she didn't know Shelby until her time at HUD. When in fact she had said she had known him for five years.

It goes on, ladies and gentlemen. One after the other --

MR. WEHNER: Your Honor, I object to the mischaracterization, and the continuing mischaracterization, of the testimony of Miss Dean.

THE COURT: All right. It's overruled. It's closing argument. The jury's recollection will control.

MR. O'NEILL: And I'll keep going, ladies and gentlemen, because I won't miss a step with objections. This is something I've done for quite sometime and I'll be able to continue.

They were lies, ladies and gentlemen. Lies, blatant attempts to cover up what had occurred, to sway you.

You've heard several times about the Government's witnesses. Mr. Wehner says it's the Government's witness, the Government called this person. Let's make no mistake about this. Andrew [Tr. 3508] Sankin is not my friend. Richard Shelby is not my friend. These are people who were called by the Government because they worked at HUD at that time, who were colleagues of Miss Dean or were friends of Miss Dean. They're not people that I know. The Government calls

who is available at that time. We go back, just like the document's, you cull through the documents, Mr. Sankin is not in my calendars. You will get the calendar entries that are in evidence. You will see it's Miss Dean's calendars in which Mr. Sankin appears, in which Mr. Shelby appears, Mr. Broussard and a host of other people that you've heard about, not mine.

I don't vouch for the credibility of these witnesses, nor does Mr. Wehner. It is you, the jury, that determines what is believable, what is credible, whether the defendant is guilty as charged or not. That is your function, ladies and gentlemen. And His Honor when he instructs you on the credibility of the witnesses, will tell you, you judge whether that person was credible, whether they've made misstatements and if those misstatements were made, do you think -- we all misstate, I misstate quite often when I go to speak and maybe speak too fast and the words come out wrong, that's one thing, but when someone purposely misstates [Tr. 3509] what they're saying, such as my brother is antsy on June 15th, when there is no more apartment, and all the other misstatements that I've just gone through, if those are purposeful, you will hear, you can just disregard her entire testimony based on what His Honor reads you on the law. That is the state of the law. If you find a witness incredible you do not have to believe a single thing that witness says.

So you as the jury can throw her testimony in the garbage. That is up to you. It's what you decide. You again are the judges of the facts.

Mr. Wehner has talked about reasonable doubt. I won't go into that because it's a concept that His Honor must instruct you on, and that's the applicable law in this case and every criminal case in this country, in every courtroom throughout these 50 States. That is the rule of law that applies in each and every criminal case; it's the Government must

prove the defendant guilty beyond a reasonable doubt and in this case, ladies and gentlemen, the Government has proved it beyond all doubt.

You've heard the evidence. The evidence that the Government produced through all the witnesses, through all the documents, and on the other side you have a series of misstatements, of falsehoods, of lies. [Tr. 3510]

They don't balance up. They're not even close, ladies and gentlemen. They can't be.

Yesterday when Mr. Wehner started on his closing argument he talked about the fact that we said there was a code, a coded reference to a number of units and that we weren't able to prove that. Well, ladies and gentlemen, we cited Mr. Greer's testimony, that Mr. Greer knew nothing about a code.

I'd like to show you Government's Exhibit 39 just briefly and show you if you don't believe that there was a code, and you might remember what I said yesterday about why would a person like Mr. Martinez pay 425,000 on Arama and 219,000 on South Florida unless he couldn't be assured of the units. Look what he's saying, "Please note that while we submitted 219 units which is as close as we could come to the 200 number, there are eight different buildings, this should present no problem because when the funds are set aside in the HUD Central Office in Washington, since they do not know the exact bedroom mix of the units, the funds are set based on all the apartment being two bedrooms. Our mix is 24 efficiencies, 153 one bedroom, and 42 two bedrooms, therefore, there is ample room to support this proposal.

Notwithstanding the above, if we could get [Tr. 3511] that the fund availability is for 219 units it would be much

better, since then there would be no confusion as to whose proposal it is.

Of course it's a code. He has to know the exact amount. He's going to shell out $129,000 and if he's paying that, he's going to make sure he gets those units.

Mr. Wehner also began with yesterday saying there's not one piece of evidence, not one document to show Miss Dean did not tell the truth, that she lied, as the Government said. You'll have the opportunity, like with all the other documents, look at these closing April papers. Look at the dates on them. They unequivocally show that she lied to you, ladies and gentlemen, on that stand, under oath.

Mr. Wehner is in a very tough position, ladies and gentlemen. Because he cast in his opening statement to get a level playing field, and that's what happened here. We picked a jury. You recall it took a lot of time to pick a jury. We picked a jury that could be fair to both sides, had nothing to do with this case and could listen dispassionately, but it wasn't this jury that hasn't provided a level playing field, and I believe that you will to both sides, it's his client by telling you falsehoods you're in a position where you [Tr. 3512] can't believe a word she said. And that prevents you from listening to them, and as His Honor will instruct you the law is clear on that, if you don't believe them you can discount that testimony.

That's what creates an uneven playing field. The evidence creates it. The playing field is even when the trial begins. It always is. You've heard no evidence. But as the evidence stacks up on one side and not the other over time as you continually hear one witness after the other and then you hear a totally incredible story on the other side, of course you're going to come for some determination once you deliberate. That's the whole jury process.

We talked about consultants again this morning. No one has ever said that the use of consultants is illegal, and I might be beating a dead horse at this point but the problem is I just want to make sure on this point, consultants are legal. They're used in a variety of different businesses. They're even used in the housing field.

What's wrong in this case is that these people were influence peddlers who had no knowledge whatsoever of the housing industry, and by themselves they can do nothing. They need a corrupt public official on the inside to give them what they want. Without that person [Tr. 3513] they're powerless. That's what this case is about.

It's not about going to lunch and talking with friends. It's about directing awards of Government monies, of taxpayer's monies to those friends simply because they can benefit you and the whole system will benefit you and your family and your friends. That's what the case is about. Not about having lunch.

Mr. Wehner mentioned the 19 units for a battered women's shelter, as I did, during closing argument, and you will remember and you'll see it in evidence, there's a note from Sam Pierce saying if we can, please do so. He's not directing anybody. He's not telling anybody. He's putting his input in.

When you go through the evidence look and see if there's any notes like that on the projects in this indictment for which Miss Dean is being charged. You're not going to see those notes. Those notes don't exist.

You heard six days of testimony about all of those other projects being funded. All around the country. All their political backing. It is a non-issue. It has nothing to do with this case.

In this case there are several distinct projects that I listed yesterday and for brevity's sake I won't go over them again. Those are the specific ones. Look through the documents, and remember in your [Tr. 3514] recollections through the course of this testimony have you heard anything or seen anything to suggest that Sam Pierce asked for those to be funded?

And furthermore, Miss Dean will tell you and has told you on the witness stand she didn't tell Sam Pierce about John Mitchell's involvement with these other people because she didn't know it. So Sam Pierce, also, he's not involved in this case. It's what she did.

You recall he ran the honor system. He relied on other people to work and do their jobs properly and when people do not do their jobs properly that's when you have a problem here. When you have a public official who uses a public office for private gain.

Mr. Wehner talked about the perjury counts. And you'll see I've listed them, counts five through 12 in the indictment, and you'll get a copy of the indictment and what those words are.

Mr. Wehner talked about 1987 and "that goes solely on information provided by Secretary for Housing." That's not true, ladies and gentlemen, because once again we have that handwritten list, Government's Exhibit 202. That's in Miss Dean's handwriting, and you heard, just like we saw at the very beginning of my closing argument yesterday, the [Tr. 3515] Government's exhibit 28, the letter to Louie Nunn at Global Research, referencing a conversation with John Mitchell. The defendant had to admit that that letter existed because we had it, but she denied being involved in that, saying Maurice Barksdale gave me that information. Just like this. This is a handwritten list of the various projects, the

amounts funded, and in fact on Metro-Dade, the exact bedroom configuration. It's in her handwriting.

So she says to you, well, yes, this is mine, this is my handwriting, but Thomas Demery is the one who told me this and I wrote it down very quickly.

Well, you remember Michael Dorsey's testimony, a witness testifying for the defense. He said that Miss Dean did speak during that meeting and was saying who was behind the project.

In her own handwriting she has the bedroom configurations and the number of bedrooms, and then it says "letter. They are funding 203 units to Metro-Dade before Metro-Dade even asks for them." Is that the way this program was supposed to operate? Is that the way it's supposed to run?

There are four separate counts of perjury, four separate counts of concealment. There is no sense going into all of them because the Government contends [Tr. 3516] that each of those was a lie and a misstatement in much the manner as you've seen during the course of this trial. The defendant's statements change as they benefit her. If she would lie on such trivial little matter as to how long she knew Rick Shelby, what do you think she'll do when faced with serious criminal charges? And you've seen what she did.

There is no doubt, as we said, about that $4000.

I'd like to talk about the message to Lance Wilson from John Mitchell. The Government has never said that other people didn't write to John Mitchell. First of all, we don't know what project we're talking about here. Arama is not mentioned and, of course, Maurice Barksdale is the

Assistant Secretary at the time. We know that. Mr. Barksdale testified.

But you might recall Government's Exhibit 18, and this is the document that says -- has a little handwritten note on top of Miss Dean's letterhead and it says to Daddy.

And there's a memo from Philip Abrams, and you recall she identified the handwriting on the upper lefthand corner as being that of Lance Wilson. So Lance Wilson is helping her out here, giving her information. She's passing it on to John Mitchell.

[Tr. 3517] Is that a defense to this charge? No, ladies and gentlemen. Because count one has three projects. Arama being the first, South Florida, the second, Park Towers, the third. Lance Wilson isn't even in the Department of Housing and Urban Development at any time when those three projects are funded.

Again, politicians. Mr. Wehner said you can see hundreds of pieces of paper in which politicians back projects. And that's true. You will see that. But what does that have to do with this case? What do these politicians -- that is not what this case is about.

You've heard the consultants were being paid big money by the developers. If all they needed was a politician, and they're a constituent of that politician, to write a letter and that would have had an effect, don't you think they would have done that and saved hundreds of thousands of dollars on each project?

That doesn't make sense. It is not credible to believe that just because someone sent a letter, it got funded.

President Reagan, a lot was talked about some project in which President Reagan announced the awarding of units, I believe it was in New Jersey, and I don't remember the State any more. Andrew Sankin is not [Tr. 3518] President Reagan. Andrew Sankin was, as we said, this guy out of school just recently, who made $250,000 and in Deborah Dean's own words he was on the family payroll. That's why he received those units. It's not Ronald Reagan we're talking about in these charges.

Other projects are non-issues. We're talking about these specific ones. Much like if there was a $50,000 kickback, Mr. Wehner said you'll hear evidence of it. If there was a $50,000 kickback she'd be charged with it. That is not one of the charges. It's a non-issue. There are 12 charges that you the jury must determine the guilt or non-guilt of the defendant. Not everything in God's creation.

And the Government has never called the defendant the devil incarnate. We are simply saying she misused her position. She misused the public trust in her time at HUD and then when it was discovered, when it was detected, she lied about it. That is what's at issue here. Not everything else. The devil incarnate? It's a non-issue.

I just would like to mention Mr. Wehner said things might have been different if the Government's exhibits 27, 28, 29, that were shown at the same time, well, you might recall they were shown to Governor Nunn at exactly the same time, and you might also note since [Tr. 3519] they're numbered 27, 28 and 29, when you get them they will be one right after other, that's exactly how we showed them. That's the order they're in.

Mr. Wehner mentioned something about the conspiracies and saying, well, some of the people said they didn't know certain things. Jack Brennan didn't know that

John Mitchell was involved in Arama. Well, isn't that the hallmark of conspiracy? Secrecy? Where people don't know it?

Remember Martin Fine, the developer for Park Towers? He said he did not know John Mitchell was involved. The consultant he hired, Eli Feinberg, he did not know Mr. Mitchell was involved. And both of those testimonies were unimpeached. Nobody ever contended that they did know. So the evidence is neither individual knew, and Mr. Fine paid $225,000, 50,000 of which went directly to John Mitchell, and he didn't even know he was involved. His role was secret. That's what conspiracies are about.

Mr. Wehner talked about the $4000. And the fact that he has shown that that is really what happened because they have a bank stub. Well, to believe this you'd have to believe that Mr. Kitchin gave her $4000 to decorate an apartment he never owned, aside from the fact that we found these documents later on to [Tr. 3520] absolutely disprove the claim that she was trying to sell it as of June 15th. So she'd have to prove that the apartment that he never owned he was going to have decorated and that this $4000 check was written when she has no funds whatsoever to pay it with.

And he told you that the FBI had time to analyze this and they would have shown that it was false. Well, that's not in evidence. There's no evidence here that the FBI had time to analyze that check stub. Or that they looked and made sure that the ink was two years old or three years old or whatever. That is not in evidence. It's the evidence on which you must base your decision, ladies and gentlemen.

And don't forget that $4000 and the antique store. No evidence yet of an antique store in 1987. In fact, she couldn't remember exactly when she got it. But it wasn't in 1987. But in 1987 we do know that only 12 days before the check from

Lou Kitchin she bought a piano for $4500, and that, too didn't come out on direct examination. That only came out on cross-examination.

Ladies and gentlemen, during his opening statement Mr. Wehner told you that the Government is all fouled up. All fouled up. That's exactly what he said. He's wrong about that. The Government's not all fouled up. Private individuals, certain individuals might be [Tr. 3521] when they don't do their job as they should. When they don't properly perform a public function. When they corruptly favor certain people. That's when Government gets fouled up. Not all Government. Not everyone.

And he kept saying your Government, and that's right. It is your Government. It's all our Government. Not for a select few, not for certain insiders who have access to high ranking public officials like Mr. Shelby who Mr. Wehner mentioned who said I didn't do anything wrong, and you might recall that I had to go back at him in redirect and say didn't you tell the grand jury, and this time I got that right, you told the grand jury several years ago, didn't you, that you were wrong, and he admitted that, yes, in fact he had. He, too, was trying to tell you he had done nothing wrong but he told the grand jury he had done something wrong. That's what Mr. Shelby testified to. He knew he had done something wrong. He knew he had access to high ranking public officials.

Ladies and gentlemen, in the name of the United States of America, I will be asking you to find the defendant guilty as to each and every charge in the indictment. All 12 of them.

In the Government's view the Government has proven its case beyond all reasonable doubt, beyond any [Tr. 3522] and all doubt. There could be no doubt that the defendant

conspired with the people in counts one, two and three, accepted that illegal gratuity or loan in count four, and then lied and covered up and concealed what she had done so she wouldn't be known for what she had done. So people wouldn't -- it wouldn't become public. Because she didn't want people to know how she was using her office, using a public office for private gain.

And by your verdict tell her no more. You won't put up with corrupt public officials, people who use their office, public office, for private gain, who work for a select few and not for all of us, because it is as Mr. Wehner said your Government, our Government.

She was a public official entrusted with millions of dollars of taxpayers' money, for what purpose? To provide housing for the poor. Is that the way it worked? Did local priorities play any role in this? No, ladies and gentlemen. It just depended on who you knew and how it worked out. And I say millions of dollars, Arama alone, the evidence shows, was over $28,000,000 and that's still being paid to this day. They're 15-year contracts.

Think of the amount of money that went for housing, and did it work the way it should have? The [Tr. 3523] way Mel Adams told you it could have if priorities played a role? No. It worked the way a select few wanted it to work.

When you are paid by the United States you work for all of us. As Mr. Wehner said, it's your Government.

Mr. Wehner asked you what would you have Miss Dean do in the performance of her duty? What would you ask of her? Honesty. Faithfulness. Undivided loyalty. Remember what I said, it is we the people, by the people, for the people. We, the people. It is all of us. It is not if your prominent and powerful and you belong to a select few. It is for all of us.

And, ladies and gentlemen, Miss Dean did not work for all of us. She worked for herself, for her family, for her own enrichment, and because of that she is guilty. Not because of lunches and other matters. It's because of her corrupt actions as a corrupt public official.

Thank you.

JURY INSTRUCTIONS

[Tr. 3555, 3557]

* * *

It is necessary, however, that the government prove beyond a reasonable doubt the defendant was aware of a common purpose of the conspiracy and was a willing participant with the intent to commit at least one of the objects of the conspiracy -- excuse me, at least one of the objects contemplated by the conspiracy.

* * *

Thus, before you may find the defendant or any other person has become a member of the conspiracy, the evidence must prove beyond a reasonable doubt that the conspiracy was formed [Tr. 3556] and that the defendant or any other person knowingly participated in the unlawful plan with the intent to further one or more of the objects of the conspiracy.

* * *

It is not necessary the government prove that the defendant joined the conspiracy to accomplish all of the objects of the conspiracy. It is sufficient if you find beyond a reasonable doubt the defendant, Deborah Gore Dean, became a willing and knowing participant in the unlawful scheme as to one of the objects of the conspiracy. Should you determine the defendant, Deborah Gore Dean, was a member of the conspiracy but that she agreed to participate only with respect to one of the alleged objects, you must agree upon which of the objects that the defendant, Deborah Gore Dean, conspired to achieve. Your verdict must be unanimous as to the crime charged -- I'm sorry, your verdict must be

unanimous as to the charged object or objects as to which the defendant, Deborah Gore Dean, conspired.

* * *

[Tr. 3557]

Now, Ladies and Gentlemen, that gets me to the third element, and after that, then we'll go to the other offenses in the indictment and then to the concluding instructions.

* * *

[T]hird element of conspiracy, the requirement that the government prove beyond a reasonable doubt that during the existence of a conspiracy, at least one overt act was committed in furtherance of the conspiracy by one or more of its members. An overt act is any act committed by one or more of the conspirators to accomplish a purpose of the conspiracy. It need not be in violation of law, and the other conspirators need not join in it or even know about it. It may be an entirely innocent act as long as it furthers the purpose of the conspiracy.

It is not necessary the purpose or purposes of the conspiracy have been accomplished or that a substantive offense that was an object of the conspiracy have been committed. Nor must the government prove the United States suffered a financial loss of money or property as a result of the conspiracy.

Furthermore, it is not necessary that all of the overt acts charged in the indictment be proved; one overt act is [Tr. 3558] sufficient. . . . As I stated before, however, you must all agree as to which overt act was committed by the defendant or one of the co-conspirators. . . .

* * *

It is sufficient if you find in fact a conspiracy was formed and existed for some time within the period set forth in the indictment and at least one overt act was committed in furtherance of the conspiracy within that period.

* * *

[Tr. 3593]

THE COURT: Okay. All right, Ladies and Gentlemen, first as to the arguments you heard yesterday and the day before, [Tr. 3594] I take it, but particularly as to yesterday and the day before, the closing arguments and more particularly as to the prosecutor's closing arguments, there were comments made as to using the word "liar" or "lying" and the like, and it is, obviously, the issue is for you as the jury to make a decision keeping in mind the evidence in the case, and it is not the opinion of counsel, that is, whatever their personal belief is, that is appropriate, so that an argument to you that someone is lying is really an expression of personal opinion by the attorney, as opposed to pointing you to the evidence and saying it's for you to make up your mind whether or not someone is telling the truth. I want you to keep that in mind.

It's the evidence you have to focus on and not the statements of counsel, which I informed you previously are not evidence in the case.

The Court will be sending back to you shortly the exhibits in the case, and as I said previously, then you review the exhibits along with your recollection jointly of what the evidence is in the case, the testimony of the witnesses, and in following my instructions, you deliberate on that basis. And you're not to be influenced by any personal expressions of

whether someone is worthy of belief or not by counsel in the case.

Transcript of Hearing
Before The Honorable Thomas F. Hogan
United States District Judge
February 14, 1994

[p. 7] THE COURT: Well, can you justify as a prosecutor at any time putting a witness on a stand and introducing documents that are put in for the purpose of identifying the defendant's involvement with some operation, illegal operation, without ever having asked the witness if they do or not or if they represent that or not?

* * *

[p. 8] THE COURT: It shouldn't be for the Court, and that's, one of the problems I have in this new trial motion going [p. 9] through it, it constantly goes back to the fact, well, the Court corrected the error. I think there's numerous occasions where that had to be done, and I wonder about the cumulative effect of saying, "Well, the Judge took care of it, he told the jury to disregard it, or he told the defendant he had his option to do this or that to try to cure this problem that arose because we put on a witness whom we hadn't talked to and didn't know if these receipts really tied into the defendant or not but still put them all in as if they did, and then later when he said he wasn't sure what they meant, we told the Court, 'Well, you can do something to cure that.'" That's concerning to me, particularly the cumulative effect of it all.

Let me move to the next issue then, the issue as to Mr. Shelby's testimony and whether because he was a government witness, that it was then fair to say he shouldn't be believed as to her statements that he made when you had called him. This concerns Mitchell's involvements or not and the contact that HUD referred to in a memorandum and whether it was the defendant who faxed him the rapid reply

letter or whether it was DeBartolomeis or Hunter Cushing and that there was in the government's files evidence of what was said or that was at least elicited by the government that was not accurate and that was then left up to defendant to try to straighten that out.

* * *

[p. 11] THE COURT: All right. Finally, let me ask you, the other concern I had was Mr. Demery and whether or not there were really concerns as to Mr. Demery's testimony, when the government had the evidence they indicted him for perjury.and had believed he had obviously committed perjury, like it believed Ms. Dean had, and then through a plea bargain, that wasn't pled to, but then he was allowed to testify and testified that he had never committed perjury, and there was apparently no bringing to the Court's attention that that was the situation, that he had this perjury indictment and had apparently discussed that with the prosecution. [p. 12]

* * *

[p. 24] THE COURT: The Court is going to do as follows in this matter: The Court does have its concerns, as it's voiced them previously, over some of the conduct of the Independent Counsel in the case and continually made rulings during the trial, recognizing it was a long, multiple-week trial, so there's obviously many witnesses that testified, but did have to make rulings during the trial at times concerning the failure of the Independent Counsel to be forthcoming as to its evidence in its files either that would fall under *Brady* or would be *Giglio* material, and being produced shortly before a witness [p. 25] testified, after having asked for it two years or so earlier, is really not a complete answer. As everyone recognizes, the defendant is entitled to due process in the trial.

There was a witness we haven't discussed except by reference at one point, I think, by defense counsel, Mr. Reynolds testified, who originally was not going to testify and then was called eventually concerning the limousine trafficking, and again perhaps it's for the jury, but I think the government as well as the defendant would agree that they all felt Mr. Reynolds was not a believable witness, and that was my impression why he originally was not going to be called as to his claims of transportation of Ms. Dean around, and I think the calendars and other evidence in the government's possession would suggest that his recollection was not correct, but he was put forward as having a recollection that was argued as to his testimony on limousine use by the defendant.

Mr. Sankin was put on the stand by the government, who has admitted that they did not interview him as to the accuracies of the receipts and his knowledge about them and his memory of them at the time he testified. That was not brought out during the testimony but only volunteered by Mr. Sankin later the next day, or when he finished his direct and was on cross, and he indicated at that time he had already told the government the night before that he couldn't recall anything about those documents, and that was not brought to the Court's **[p. 26]** attention as it should have by the independent prosecutor.

Mr. Demery obviously had substantial issues as to his credibility and his perjury and what the government knew about that and believed they knew about it, and again, I do not think that that was timely at least brought out for the defendant's benefit. What, there's hundreds of thousands of documents, and to say that that's sufficient I do not think answers the requirements upon the independent prosecutor.

Mr. Shelby, I think, is somewhat of a collateral matter as to that one document we're discussing, but again standing

alone is a concern that that was not further reviewed with the Court at least as well as the counsel for the defendant as to his deliverance or acceptance of the receipt of this document and who his contact was at HUD.

And the receipt by Mr. Cartwright, again, concerns the Court, because what we're talking about, I think, is this overall impression one gets of Ms. Dean that the prosecutor sought to convey as a person of untruthfulness and of doubtful character, who would engage in these kind of activities which may not have been directly related to the charges against her in some instances or that the government had information or could have had the information had they asked the questions of the witnesses beforehand that the documents, whatever they were using, were actually not accurate that they wished to use against her and did at times, and I don't understand that **[p. 27]** approach.

I think if it had been an assistant United States attorney who had done that before the Court in an everyday case, had put a witness on the stand and asked him to identify this group of documents, they all related to meetings with the defendant, and then had been told later by the witness that that was not accurate, I would expect every assistant I've ever had here would have brought that immediately to my attention and the defenses attention, and that was not done, and again, I don't understand that.

It evidences to me in the Independent Counsel's office, where there were *Brady* requests made a long time ago, statements there were no *Brady* materials, which is obviously inaccurate, where these witnesses are put on that I've just reviewed, where there was substantial questions and information that they may not have been telling the truth in the prosecution's files or the prosecution didn't ask if they were telling the truth to make sure they were before they went on the stand, it evidences to me by the Independent

Counsel's Office at least a zealousness that is not worthy of prosecutors in the federal government or Justice Department standards of prosecutors I'm very familiar with, and that concerns the Court and is not the first time I've seen it in Independent Counsel cases.

There is a report recently of an Independent Counsel [p. 28] before Judge Gesell in the North case, where he had to hold a hearing and put the counsel on the stand because of certain matters that had been represented that were not accurate, and after a hearing, he did not take any further steps except to criticize the Independent Counsel for their actions.

The real issue for the Court is whether or not the cumulative effect of multiple concerns and multiple corrections the Court gave the jury leads to an unfair trial for the defendant. It was a multiple-week trial. There were many, many witnesses and immense documentary evidence.

I think parsing it out one witness at a time makes it very difficult for the defendant to meet her burden, as this would not have affected the jury overly and this would not cause the jury to find the defendant not guilty, etc. What is amorphous and hard to quantify is the cumulative effect of these matters and what can be said how it could have overall affected the jury's perception of the case.

The jury was selected, the Court's recollection is, with very few strikes exercised by the Independent Counsel. The panel was called they were satisfied with. The defendant had a jury selection expert consulting as well as herself and her counsel, obviously, and exercised all their strikes. So the jury was one that there had been a fairly close review of by defense counsel. I believe the government only exercised a couple of strikes, as I recall, in the selection of the jury.

[p. 29] But the concern for the Court is after that, as to the cumulative effect of these activities that I have reviewed on all these pleadings, and again, I'm concerned about how that impacted upon the jury. As I said, it's almost impossible to quantify the total impact of various areas the Court has identified as it believes that the Independent Counsel should have been much more forthcoming and candid on its use of these witnesses and the production of these documents in a more timely fashion to the defendant to be able to meet the challenges.

On the other hand, there were multiple other witnesses that testified as to defendant's involvement, and the defendant herself testified at length as to her noninvolvement in these matters in a criminal sense, and the jury concluded against her.

There was one other issue I didn't discuss with counsel, but I'd just note for the record that another instance where the evidence was challenged by the defendant was Agent Cain's testimony. The defendant had raised the issue that Mr. Cain couldn't have been where he said he was, etc., and that's been briefed by both sides, and defendant was going to submit a supplemental affidavit that's never been filed, so I take it her recollection then was mistaken as to Agent Cain as to the situation in Los Angeles at this party and that what she said originally was not accurate.

The Court is going to do as follows in this matter: Recognizing its obligations to ensure the defendant has a fair [p. 30] trial and is not prejudiced by any lapses by the prosecution in their handling of the case, the Court is going to deny the motion for a new trial. While it had concerns it's expressed and recognizes the difficulty defendant had in defending an amorphous case that was not helped by the approach of the prosecution particularly -- I don't think I've ever seen the prosecution put on a witness whom they didn't

interview as to particular documents they want to tie with a defendant because they say the witness may be hostile. Then you don't put the witness on, or you interview the witness before you put him on as to what these documents mean and what his recollection is. That's compounded by the witness telling the prosecution after he testifies he really doesn't remember anything about those documents, and that's not revealed.

That gives great concern to the Court, but I don't think that that tells the whole story, that either alone or in conjunction with other claims of *Brady* violations or failure to be forthcoming to the Court, because of the way the Court handled the matters, giving the defendant the option how they wished to go through that, how it instructed the jury at times, as it had to, I believe that any prejudice was met adequately by the Court's instructions and accommodations to counsel for the defendant to appropriately rebut evidence that may have been produced by the government without a full exploration as to its accuracy.

[p. 31] The Court is going to deny the motions for a new trial both upon the government's alleged, on grounds advanced by the defendant, failures of proof or abuses by the government. Many of the witnesses the government was required to call were adverse witnesses. They were either unindicted co-conspirators or individuals who had been given immunity and required to testify or were less than cooperating witnesses, and they had to use the witnesses they had, which is typical, and they have to then rely upon the jury in seeing who they're going to believe in the case.

The abuses by the government, it also is accused of improper closing argument, I think the Court took care of that appropriate with its own sua sponte instructions it gave after consulting with counsel about it that this was, it had to be recognized, a perjury case, and it's very hard to argue a case

of perjury unless you are allowed to refer to the defendant's testimony and have the jury consider what it's worth and taking all that into account.

It's apparent to the Court there was sufficient evidence, as I said before, on the counts to go to the jury, and I do not believe there was any overwhelming failure by the government in its zealous efforts in this case that resulted in such prejudice to the defendant as would require a new trial. So the Court is going to deny the motions for the new trial as well as the motion for judgment of acquittal, as I've previously [p. 32] ruled.

Petitioners Motion For Judgment of Acquittal And For A New Trial, Exhibit UU At 3, 4, 7, 8 (Nov. 30, 1994)

[p.3]

Demery met Winn for lunch in Washington, D.C. during June, 1987. They discussed, among other things, life in Colorado. Demery learned during this conversation that Winn owned a condominium (condo) in Vail, Colorado. Demery inquired if the condo would be available during the Christmas holiday season of 1987/88. Winn advised that he was not sole owner of the condo and [p.4] would have to check to see if it would be available during this time. Demery could not recall hearing if the condo was available prior to October, 1987. He had discussed other matters with DeBartolomeis when he learned that the condo would be available during the Christmas holiday season during that year. Demery did not think to ask about paying for the use of the condo at that time. He did not view it as a problem in any ethical, moral or illegal way.

* * *

[p.7]

In 1990 when Demery was called to testify before the Lantos Committee, he was most concerned about questions regarding the use of Winn's condo. He wanted to steer his answers as far away as possible from Abrams and Winn so he could avoid questions concerning the condo. In order to avoid these questions he decided to try to disassociate himself from Winn and Abrams. He believed if he spoke about his association with Winn and Abrams and their involvement in mod rehab he would have initiated questions [p.8] concerning

the condo. Consequently, when the Committee asked Demery questions about Demery's knowledge of Winn and Abrams, he tried to deflect the Committee's interest in them by testifying that he thought they were developers of buildings in the area -- not acknowledging that he knew them to be developers of HUD-subsidized projects.

CONSTITUTIONAL PROVISIONS & FEDERAL STATUTES

UNITED STATES CONSTITUTION, AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

18 U.S.C. § 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S.C. § 1001. Statements or entries generally.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and

willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2)

Supreme Court, U.S.
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No. 95-942

In the Supreme Court of the United States

OCTOBER TERM, 1995

DEBORAH GORE DEAN, PETITIONER

v.

UNITED STATES OF AMERICA, RESPONDENT

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF IN OPPOSITION

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76 pp

QUESTIONS PRESENTED

1. Whether the court of appeals properly determined, on the facts of this case, the scope of one object of several multiple-object conspiracies.

2. Whether the court of appeals correctly held on the record before it that petitioner received a fair trial and that alleged instances of prosecutorial misconduct did not deny petitioner due process.

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BRIEF IN OPPOSITION

STATEMENT

Petitioner, Deborah Gore Dean, was an employee of the Department of Housing and Urban Development ("HUD") from 1982 to 1987. In July 1984, she was promoted to Executive Assistant to the Secretary. In 1987, petitioner was nominated by the President to become an Assistant Secretary of HUD. Hearings were held on her nomination by the Senate Committee on Banking, Housing, and Urban Affairs ("Senate Banking Committee") on August 6, 1987, but petitioner's nomination was not discharged.

In the spring of 1989, the Inspector General of HUD ("IG") reported apparent mismanagement of the Moderate Rehabilitation Program ("Mod Rehab Program"), a program aimed at upgrading substandard housing for low-income tenants. The program was established in 1978 to fund the improvement of marginally deteriorating rental housing and to subsidize rents of lower-income families living in those improved units. Congress authorized HUD to pay owners of substandard housing, either directly or indirectly through public housing agencies, to upgrade the properties. Regulations made state and local public housing authorities primarily responsible for program administration. According to the IG, top Department officials had, from 1984 to 1989, allocated hundreds of millions of dollars of program funds on an informal, undocumented, and discretionary basis. Ignoring regulations that should have governed their funding decisions, the officials directed money to favored developers, many of whom had connections to the Department. App., *infra*, 2a.[1]

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[1] The appendix to the petition includes an abridged version of the opinion of the court of appeals and omits relevant portions of the court's discussion. A complete copy of the court's opinion is appended to this brief.

A subcommittee of the House Committee on Government Operations investigated further and found that, largely because of the administration of the Mod Rehab Program, HUD had become "synonymous with rampant abuse, favoritism, and mismanagement." App., infra, 2a-3a. The subcommittee identified petitioner as a "key player" in the Department's "giveaway game." App., infra, 3a.

On July 7, 1992, a grand jury returned a thirteen-count indictment, charging petitioner with three separate multiple-object conspiracies in violation of 18 U.S.C. § 371 (Counts One, Two, and Three), one count of having accepted an illegal gratuity in violation of 18 U.S.C. § 201, four counts of perjury in violation of 18 U.S.C. § 1621, and five counts of concealment and false statements in violation of 18 U.S.C. § 1001 (the "substantive § 1001 counts"). The district court subsequently dismissed one of the substantive § 1001 counts. The case against petitioner, which was brought by an Independent Counsel, centered on petitioner's involvement with the Mod Rehab Program.

In all three conspiracy counts, petitioner was charged with planning both to defraud and to commit an offense against the United States. The "offense" against the United States that petitioner allegedly schemed to commit was 18 U.S.C. § 1001 (the "§ 1001 object"). Count Three also listed an additional criminal "offense" — the acceptance of an illegal gratuity in violation of 18 U.S.C. § 201 — as an object of the conspiracy.

Following a jury trial, petitioner was convicted by general verdict of all twelve remaining counts and was sentenced to a term of confinement and a fine. Petitioner appealed, arguing, among other things, that there was insufficient evidence to support her convictions.

After oral argument before the court of appeals, this Court decided *Hubbard* v. *United States*, 115 S. Ct. 1754 (1995), narrowing the reach of 18 U.S.C. § 1001. Relying

on *Hubbard*, the court of appeals reversed petitioner's convictions on the four substantive § 1001 counts. The court reasoned that those counts charged false statements before the Senate Banking Committee and that, under *Hubbard*, § 1001 does not make criminal false statements to the legislative branch. App., *infra*, 33a-34a.

The panel declined, however, to reverse the three conspiracy convictions. The court of appeals explained that, in contrast to the substantive § 1001 counts, the § 1001 objects of the conspiracy counts did not involve Dean's statements to the Senate Banking Committee. App., *infra*, 34a n.10. Instead, the § 1001 objects included "actions Dean took as a Department official," which was conduct that "was plainly within the jurisdiction of an executive agency — the Department of Housing and Urban Development." *Ibid.*

Petitioner sought rehearing and suggested rehearing in banc in the court of appeals, specifically calling the court's attention to *Hubbard* and arguing that the invalidation of the substantive § 1001 counts required reversal of the conspiracy counts that charged violation of § 1001 as one of their objects. After requesting and receiving a response from the United States, the court of appeals denied the petition without dissent. Pet. App. A-25.

ARGUMENT

Neither of the questions presented in the petition warrants review. As to both issues presented, the court of appeals simply applied settled law to the facts before it. The court's resolution of those questions plainly was correct. The petition therefore should be denied.

1. PETITIONER'S FIRST QUESTION PRESENTED IS PREMISED ON A MISREADING OF THE HOLDING BELOW

A. THE COURT OF APPEALS HAD NO OCCASION TO APPLY *YATES* TO THE CONSPIRACY COUNTS

Petitioner first (Pet. 6-14) argues that this Court should grant certiorari to decide whether the court of appeals' failure to reverse the multiple-object conspiracy counts is in conflict with this Court's precedent and creates a conflict among the circuits. But petitioner's alleged conflict is illusory, as it rests entirely on a misreading of the court of appeals' decision. Petitioner's real claim is that the court of appeals misinterpreted the scope of the § 1001 object of the multiple-object conspiracies. That question is, of course, entirely fact-specific. In any event, a review of the record demonstrates that the court accurately construed the scope of the § 1001 object and affirmed the conspiracy convictions by properly applying settled law.

Petitioner argues that the court of appeals' reversal of her convictions on the substantive § 1001 counts for false statements she made to the Senate Banking Committee on August 6, 1987, requires that the court also set aside her convictions on the multiple-object conspiracy counts.[2] Pet.

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[2] This argument is inapplicable to Count Three, which charged that petitioner conspired to violate both § 1001 and § 201. Because the court of appeals affirmed petitioner's conviction on the substantive § 201 count (see App., *infra*, 31a-33a), there is an independent and adequate basis for the conspiracy verdict.

6. In support of her argument, Petitioner cites *Yates* v. *United States*, 354 U.S. 298 (1957), which held that a conviction by general guilty verdict of a multiple-object conspiracy must be reversed if one of the objects of the conspiracy is legally inadequate. But *Yates* is inapposite here. As the court of appeals explained, the conduct charged in the substantive § 1001 counts, petitioner's false statements to the Senate Banking Committee, is not the conduct identified as the § 1001 object of the conspiracies. Instead, the conspiracy counts alleged that petitioner made false statements and covered up actions that she took "as a Department official" (App., *infra*, 34a n.10) and that accordingly served to conceal her scheme from her HUD colleagues; her statements to the Senate Banking Committee were cited only as overt acts in furtherance of the conspiracy.[3]

That the court of appeals did not view the conduct involved in the substantive § 1001 counts and in the conspiracy counts as identical is confirmed by the court's description of the alleged conspiracies. The court noted that all three conspiracies followed the same pattern: developers seeking Mod Rehab Program funds hired petitioner's coconspirators, who held themselves out as able to obtain such funds; petitioner used her influence at HUD to make sure that her coconspirators' clients received program monies or favored treatment; and in exchange for petitioner's assistance, her coconspirators helped her professionally, worked on her political behalf, and, in one instance, gave her $4,000. App., *infra*, 9a. The court then noted that, "[t]o hide the conspiracies, Dean concealed the way the Department actually made its funding decisions." *Ibid.* Nowhere in the court's summary of the gist of the conspiracy

[3] The overt acts used to establish a conspiracy need not be criminal in character. See *Yates*, 354 U.S. at 334; *Braverman* v. *United States*, 317 U.S. 49, 53 (1942).

counts did it even mention petitioner's false statements to the Senate Banking Committee.[4]

To further distinguish the scope of conduct included within the § 1001 object of the conspiracy counts from the § 1001 substantive counts, the court began the section immediately following its discussion of the conspiracies by stating that:

> The *other* eight counts in the indictment arise from Dean's testimony before the Senate Committee on Banking, Housing and Urban Affairs regarding her nomination for Assistant Secretary for Community Planning and Development.

App., *infra*, 33a (emphasis added). And in the next to last sentence of that section, the court reiterated that petitioner was convicted of the substantive § 1001 counts "for statements she made before Congress." App., *infra*, 34a. The court added (at App., *infra*, 34a n.10. (emphasis added)) that,

> *[b]y contrast*, the government supported Counts One, Two, and Three, in which it claimed that Dean had conspired to violate 18 U.S.C. § 1001, with evidence of actions Dean took as a Department official. This conduct was plainly within the jurisdiction of an executive agency — the Department of Housing and Urban Development.

There can be no doubt, therefore, that the court of appeals did not view the § 1001 object of the conspiracies as relating to petitioner's statements to the Senate Banking Committee. And under this reading of the indictment, reversal of the substantive § 1001 counts (which involved

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[4] Neither did the court discuss petitioner's statements to the Senate anywhere else in the its extensive discussion of the evidence supporting petitioner's conviction on the three conspiracy counts. See App., *infra*, 8a-31a.

statements to Congress) has nothing to do with the question whether petitioner engaged in *other* conduct that gave rise to the conspiracy charges. The issue actually raised by the court of appeals' decision, therefore, is not whether *Yates* was properly applied, but rather whether the court of appeals accurately determined the scope of the § 1001 object of the conspiracies. This fact-bound question plainly does not warrant review.

B. THE COURT OF APPEALS PROPERLY APPLIED SETTLED LAW TO THE FACTS OF THIS CASE.

Review of petitioner's convictions on the multiple-object conspiracies also is inappropriate because the court of appeals' decision is clearly correct. The indictment identifies the § 1001 goal of each of the conspiracies in substantially the same terms:

> It was a further goal of the conspiracy that the defendant DEBORAH GORE DEAN would falsify, conceal, and cover up the manner in which HUD funding decisions were actually made in order to hide the existence and ongoing nature of the conspiracy.

Pet. App. A-29 (Count One ¶ 13); see Pet. App. A-42 (Count Two ¶ 15); Pet. App. A-57 (Count Three ¶ 19). Each conspiracy count then sets forth in specific detail the manner and means by which its goals were accomplished. In Count One, for example, the next nine paragraphs allege how petitioner used her official position to facilitate the award of HUD benefits (including Mod Rehab Program funds) to her coconspirators and how she and her coconspirators benefitted from her conduct. Count One ¶¶ 14-22. Not once in those subsequent paragraphs did the government refer to petitioner's testimony before the Senate Banking Committee. But in the tenth paragraph the indictment charges, in language tracking the definition of the § 1001 goal, that:

> It was a further part of the conspiracy that defendant DEBORAH GORE DEAN would falsify, conceal, and cover up the manner in which HUD funding decisions, including Mod Rehab funding decisions, were actually made, in order to hide the existence and ongoing nature of the conspiracy, so that its goals might be accomplished.

Pet. App. A-29 (Count One ¶ 23); see Pet. App. A-42 (Count Two ¶ 25); Pet. App. A-57 (Count Three ¶ 19). By placing the allegations in the charging instrument immediately after the explanation of the typical operation of the conspiracy (and at least 60 paragraphs *before* petitioner's false statements to Congress are even mentioned in Count One), the indictment made clear that the § 1001 object of the conspiracies was not limited to hiding petitioner's scheme from the Senate Banking Committee. This interpretation of the indictment makes sense. One would expect one aspect of a conspiracy to be its concealment from those uninvolved; otherwise, it would be a short-lived criminal venture.

Indeed, the indictment does not refer to petitioner's statements to the Senate Banking Committee until it sets forth the overt acts in furtherance of each conspiracy — and then it does so only in the last two paragraphs of the section. See Pet. App. A-40 to A-41 (Count One ¶¶ 87-88); Pet. App. A-54 to A-55 (Count Two ¶¶ 107-08); Pet. App. A-64 (Count Three ¶¶ 64-65). Read in context, therefore, it is clear that the court of appeals correctly concluded that the § 1001 object defined in the indictment addressed "conduct [that] was plainly within the jurisdiction of an executive agency — the Department of Housing and Urban Development." App., *infra*, 34a n.10.

The trial court's instructions to the jury underscore the nature of the § 1001 object. As to Count Three, for example, the trial court told the jury that the indictment broadly charged that petitioner "conspired to falsely conceal and cover up material facts and to make false and fraudulent

statements and representations concerning the manner in which HUD funding decisions were actually made in order to hide the existence and nature of the unlawful conspiracy." Tr. 3548; see Tr. 3546 (Count One); Tr. 3547 (Count Two). There was no suggestion in the jury charge that the conspiracy counts addressed false statements made to Congress.[5]

In light of the scope of the § 1001 object of the conspiracies and the fact that the court of appeals found the evidence adequate to support conviction as to at least one of the objects of the conspiracy (the conspiracy to defraud the United States), the panel correctly affirmed petitioner's multiple-object conspiracy convictions.[6] That would be so even had the evidence been insufficient to support conviction as to the § 1001 object of the conspiracy; as the court of appeals explained (at App., *infra*, 33a n.9), this Court held in *Griffin* v. *United States*, 502 U.S. 46, 57 (1991), that where one object of a multiple-object conspiracy is invalidated because the evidence is insufficient, the multiple-object conspiracy conviction is still valid. The Court reasoned that it is unlikely that a jury, which is well equipped to analyze evidence, would convict on a ground that was unsupported by adequate evidence when there

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[5] Although the trial court correctly instructed the jury that many *elements* of the § 1001 object in the conspiracy counts and the substantive § 1001 offenses are the same (Tr. 3553), the court did not tell the jury that the § 1001 object and the substantive § 1001 offenses involved the same *conduct*.

[6] As the court of appeals explained after finding the evidence sufficient to affirm petitioner's conviction for conspiracy to defraud the United States, "there is no need to determine whether the evidence relating to Counts One, Two and Three also supports a finding that [petitioner] conspired to violate § 1001. Even if it did not, [petitioner's] convictions on these counts would stand. A general verdict on a multiple object (sic) conspiracy is valid so long as the prosecution submits sufficient proof of one object of that conspiracy." App., *infra*, 33a n.9.

existed an alternative ground for which the evidence was sufficient. *Id.* at 59-60. In sum, the court of appeals' decision affirming petitioner's conspiracy convictions is in complete harmony with the jurisprudence of this Court; no conflict or error is presented.

II. PETITIONER'S DUE PROCESS CLAIM IS INSUBSTANTIAL

Petitioner's second argument (Pet. 14-29) is that prosecutorial misconduct violated her constitutional right to due process and a fair trial. This contention is insubstantial. Petitioner does not argue that the court of appeals applied an improper constitutional standard in assessing her claims. Rather, she complains that the court misapplied settled law to the particular facts of her case. To review this complaint, the Court would have to recreate the context, tone, and atmosphere of a multi-week trial — which included hundreds of documents, numerous witnesses, and comprehensive jury instructions — to determine whether, in light of the overall proceeding, certain isolated prosecutorial statements and nonmaterial evidence tainted the trial sufficiently to make the entire proceeding fundamentally unfair. Review to address such a fact-intensive issue is unwarranted.

It is plain, in any event, that the decision below is correct. Petitioner asserts that the cumulative effect of several alleged instances of prosecutorial misconduct violated her constitutional right to a fair trial. Pet. 14. Even if trial errors occurred, as they do in many prosecutions, both courts below concluded that petitioner's trial was fair. There is no reason to doubt the validity of this conclusion. *United States* v. *Agurs*, 427 U.S. 97, 114 (1976).

1. Petitioner complains that the prosecutor improperly questioned her veracity during closing argument. But petitioner was charged with four counts of perjury, and, as the court of appeals noted, "[t]he prosecutor had every right to argue that she had not told the truth." App., *infra*, 49a. The trial judge similarly noted that "it's very hard to

argue a case of perjury unless you are allowed to refer to the defendant's testimony and have the jury consider what it's worth." Pet. App. A-155 to A-156. Indeed, petitioner's counsel told the jury repeatedly in his opening that this case was about who was telling the truth and who was lying, and that petitioner had not lied. Tr. 77-83.

Moreover, the prosecutor's statements must be considered in context. See *Darden* v. *Wainwright*, 477 U.S. 168, 179 (1986) (must view impact of statements in context of entire trial). In virtually every instance cited by petitioner, the prosecutor's statement as to petitioner's veracity was preceded by a reference to a particular piece of evidence or to an event that called her truthfulness into question. These statements were not pervasive, as petitioner would have it. Rather, the prosecutor merely asked the jury to draw reasonable inferences from evidence properly presented that tended to indicate that petitioner was guilty of the crimes with which she was charged (one of which was perjury).

In addition, even if some of the prosecutor's statements regarding the truthfulness of petitioner's testimony had exceeded the extensive leeway afforded counsel during closing argument,

> a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone, for the statements or conduct must be viewed in context; only by so doing can it be determined whether the prosecutor's conduct affected the fairness of the trial. *United States* v. *Young*, 470 U.S. 1, 11 (1985).

In this case, it cannot be said that the prosecutor's isolated comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Darden*, 477 U.S. at 181; accord *Donnelly* v. *DeChristoforo*, 416 U.S. 637, 643 (1974). As the court of appeals held, even if any of the prosecutor's statements might have been

perceived by the jurors to spill over into expressions of personal belief, "the district court cured the problem." App., *infra*, 50a. During closing argument, the prosecutor explicitly told the jury that it was for them to determine who is believable. Pet. App. A-82. The trial court reiterated that point in comprehensive instructions to the jury, stressing that it alone was to decide the believability of witnesses. Pet. App. A-147; see, *e.g.*, Tr. 3531 ("You decide the value of the evidence and the believability of the witnesses."); Tr. 3535 ("You are the sole judge of the credibility of the witnesses. In other words, you alone are to determine whether to believe any witness and the extent to which any witness should be believed."); Tr. 3537 ("The defendant has introduced testimony that she is a truthful and honest person. Such evidence may indicate to you that it is unlikely that a truthful and honest person would commit the crimes charged or testify untruthfully. The government has introduced evidence that the defendant has a bad reputation for truth and veracity. You should consider all this evidence along with other evidence in the case in determining the guilt or innocence of the defendant, and you should give it such weight as in your judgment it is fairly entitled to receive."). This Court has found that curative instructions such as these are important factors in minimizing the prejudicial effect of any improper argument by a prosecutor. See *Donnelly*, 416 U.S. at 644.

2. Petitioner asserts that the prosecutor relied in closing argument on three pieces of evidence that he knew or should have known to be false: the testimony of Thomas T. Demery, receipts from Andrew Sankin, and the testimony of Ronald L. Reynolds. The knowing use of perjured testimony violates due process "if there is any reasonable likelihood that the false testimony could have affected the jury's verdict." See *United States* v. *Bagley*, 473 U.S. 667, 680 n.9 (1985). Under this standard, no reversible error occurred here for two reasons: the prosecutor did not

knowingly use perjured testimony, and, even if he had, it is unreasonable to believe that such testimony could have affected this verdict.

a. Petitioner first complains (Pet. 22) that the prosecutor did not on redirect examination correct Demery's denial on cross-examination of ever having lied under oath before Congress, even though the prosecutor assertedly knew that Demery had done so. Petitioner contends that had the prosecutor taken this action, the jury would have been less likely to believe Demery's testimony that he first learned of a Dade County funding request from petitioner, and not vice versa.

There is no factual basis for this claim. Petitioner knew — as a result of the government's pretrial disclosures — that Demery originally had been charged with perjury before Congress, and she was aware of the basis for that charge. She also knew, and the government elicited before the jury, that Demery had pleaded guilty to obstructing a grand jury investigation. Thus, had petitioner actually believed that Demery perjured himself at trial, she had the material to impeach him readily at hand. That she did not do so reinforces what is already apparent from the record: the question as to which petitioner now claims that Demery perjured himself was ambiguous.

But in any event, even if Demery's testimony had been perjurious, that testimony was cumulative and very limited, making it unreasonable to believe that it had an impact on the jury's verdict. The government offered far more probative evidence linking petitioner to the Dade County projects. Indeed, in discussing the sufficiency of the evidence of petitioner's involvement in those projects, the court of appeals did not bother to mention Demery's statements. Rather, that court relied on petitioner's own handwritten note "recording precisely the number of units for which Kitchin's [, a coconspirator's,] client wanted funding," her ties to

Kitchin, and Kitchin's testimony that he had discussed the project with petitioner. App., *infra*, 29a-30a.

b. Petitioner asserts (Pet. 24) that the government presented false evidence at trial by introducing credit card receipts from a coconspirator, Sankin, that indicated he had entertained and given gifts to petitioner. Petitioner asserts that the night before the receipts were entered into evidence, Sankin told the government that he could not recall anything about the documents.

That Sankin denied knowledge of a link between some of the charge slips and petitioner does not mean, of course, that there was no nexus. Sankin acknowledged entertaining and giving gifts to petitioner. Tr. 2701-2704. Moreover, virtually all the receipts referenced petitioner by name or by her HUD title. See, *e.g.*, GX 11f, 11j, 11k, 11l, 11m, 11n, 11o, 11p, 11u, 11w, 11q, 11v. Finally, Sankin's alleged inability to link the slips to petitioner may well have been affected by other factors. As the trial court observed, many of the witnesses the government was required to call were adverse, as they were either unindicted coconspirators or individuals who had been given immunity and required to testify. Pet. App. A-155.

In any event, there can be no doubt that petitioner was not prejudiced by the government's failure to raise the question of perjury during direct examination. The omission subsequently came to light during trial, and the judge allowed defense counsel to cross examine Sankin, eliciting testimony that several of the charge slips "'were definitively not related to Deborah Dean.'" App., *infra*, 46a. Consequently, the jury was able to consider Sankin's testimony.

c. Petitioner further complains (Pet. 23) that the government introduced the testimony of Ronald L. Reynolds, a HUD driver who testified about driving petitioner to lunches where she met a coconspirator, John Mitchell, even though the government had introduced calendars and other

evidence that contradicted some of Reynolds' testimony. According to petitioner, these documents (unlike the Sankin receipts she chides the prosecutor for presenting) must be truthful and Reynolds (unlike Sankin) therefore must be a liar. As noted above, however, there is nothing impermissible about presenting contradictory evidence to the jury and allowing it to sort out the conflict.

Moreover, this testimony was cumulative and could not have had a bearing on the verdict. Reynolds testified that petitioner and Mitchell lunched on certain occasions, and thus had a personal relationship. But the jury had before it evidence that Mitchell was a close companion of petitioner's mother, that petitioner considered Mitchell to be her stepfather and referred to him as "Daddy," and that Mitchell referred to petitioner as his "daughter." Tr. 1368. In light of evidence demonstrating this close, familial relationship, it defies reason to believe that testimony regarding their occasional lunches together infected the jury's judgment.

3. Petitioner asserts (Pet. 25-26) that the prosecutor improperly vouched for government witnesses and suggested the existence of incriminating information outside of the record. Both claims lack merit.

Petitioner apparently interprets the prosecutor's statement that she was "the only one we know who definitively did lie" as an indirect attempt to vouch for the testimony of all other witnesses. But this isolated statement, like the references to petitioner's truthfulness that are discussed above, was argument for an inference that is supported by evidence in the record.

Petitioner also contends that the government offered no evidence that she had misled Secretary Pierce, and therefore that the prosecutor suggested the existence of incriminating information outside the record by arguing: "Just as she's deceived you or attempted to do so, * * *, she misled Samuel Pierce and didn't tell him of her hidden interest."

(Pet. 25. But petitioner's initial premise is faulty; there is (evidence in the record from which a reasonable factfinder (could conclude that petitioner misled the Secretary. For (example, petitioner herself stated that Secretary Pierce was (a fine man and a prominent attorney. One could reasonably (infer from such evidence that Secretary Pierce would not (have allowed his Executive Assistant to participate in (decisions regarding projects in which she had an interest.

But even if either of the above statements exceeded the (broad leeway given attorneys during closing argument (which (is far from clear in this case involving concealment and (numerous perjury counts), any prejudicial effect was (certainly cured by the court's repeated and forceful (instructions to the jury and the quantum of evidence (establishing petitioner's guilt. See, *e.g.*, *Young*, 470 U.S. at 19-20.

4. Petitioner complains — in an argument not raised below — that the prosecutor acted to prejudice the jury against her by making two purportedly "smart comments," by making quips after she answered some questions during cross examination, and by trying to turn the jury, which was composed entirely of African Americans, against her because she was "a prominent Caucasian." Pet. 27. In fact, there was no such effort to prejudice the jury. The comments about which petitioner complains are taken out of context and misinterpreted. Moreover, even if they had been improper, they plainly are far too isolated to constitute prejudicial error. See *Donnelly*, 416 U.S. at 645.

In particular, according to petitioner (Pet. 27-28), the prosecutor tried to inflame the jury based on race by arguing that she tried to implicate her predecessor, an African American, as the one who approved certain Mod Rehab Program units and that she tried to deceive Secretary Pierce, also an African American, by keeping him uninformed of her personal interest in certain funding decisions. But the prosecutor never made anything of the race of these two

individuals. The government's point had nothing to do with race, and turned only on the official position that these individuals held. The government's argument thus went to an important aspect of its case regarding one of the § 1001 objects of the conspiracies: it explains how petitioner, in both instances, attempted to conceal her involvement in the conspiracies from others at HUD. Nothing in this argument is improper.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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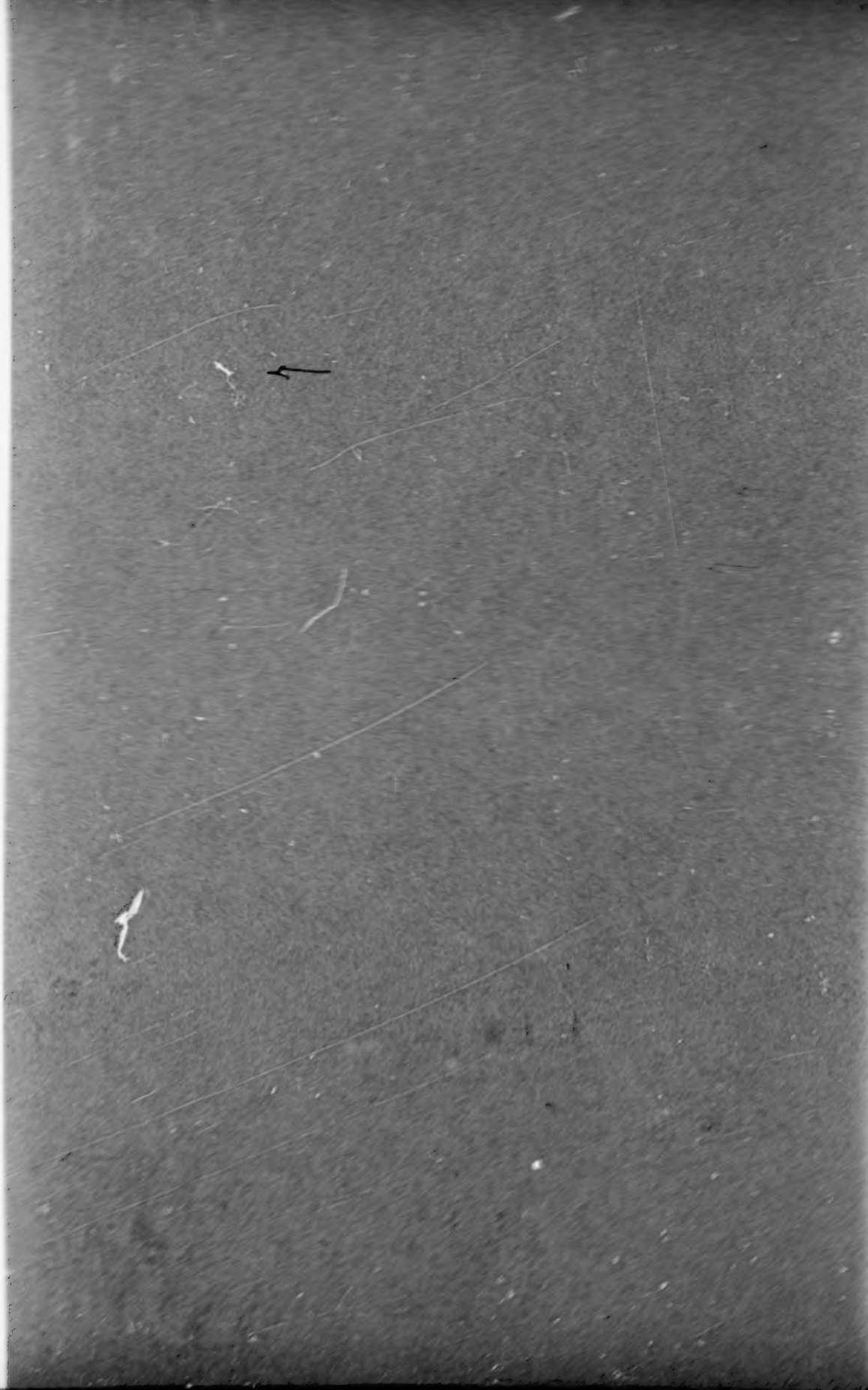
FEBRUARY 1996



APPENDIX

UNITED STATES of America, Appellee,

v.

Deborah Gore DEAN, Appellant.

No. 94-3021.

United States Court of Appeals,
District of Columbia Circuit.
Argued Nov. 15, 1994.
Decided May 26, 1995.

Suggestion for Rehearing In Banc
Denied Sept. 13, 1995.*

James M. Spears, argued the cause, Washington, DC, for appellant. With him on the briefs was Joseph J. Aronica.

Bruce C. Swartz, Deputy Independent Counsel, argued the cause, Washington, DC, for appellee. With him on the brief were Arlin M. Adams, Independent Counsel, and Robert J. Meyer, Associate Independent Counsel.

Before: WALD, SILBERMAN, and RANDOLPH, Circuit Judges.

RANDOLPH, Circuit Judge:

A jury convicted Deborah Gore Dean, a former employee of the Department of Housing and Urban Development, of three counts of conspiracy to defraud the federal government, one count of having accepted an illegal gratuity, four counts of perjury, and four counts of engaging in a scheme to conceal material facts. The district court sentenced Dean to two concurrent terms of twenty-one months' confinement on the first two conspiracy counts and

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* *Sentelle, Circuit Judge, did not participate in this order.*

fined Dean $2,500 on each of those counts. On each of the remaining counts, the court sentenced Dean to twenty-one months' confinement, to run concurrently with each other and with the sentences imposed under the first two conspiracy counts. On appeal, Dean maintains that the evidence presented at trial was insufficient to support her conviction; that the trial court erred in quashing subpoenas she served on a Senator and a Senate committee investigator; that the government engaged in prosecutorial misconduct, depriving her of a fair trial; and that the trial court improperly sentenced her.

I

In the spring of 1989, the Inspector General of the Department of Housing and Urban Development reported apparent mismanagement of a HUD program aimed at upgrading substandard housing for low-income tenants. OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AUDIT OF SECTION 8 MODERATE REHABILITATION PROGRAM (Apr. 26, 1989) [hereinafter OIG AUDIT REPORT]. According to the Inspector General, top Department officials had, from 1984 to 1989, allocated hundreds of millions of dollars of program funds on an informal, undocumented and discretionary basis. *Id.* at 5. Ignoring regulations that should have governed their funding decisions, the officials directed funds to favored developers, many of whom had connections to the Department. *Id.* at 5-9. A subcommittee of the House Committee on Government Operations investigated further. HOUSE COMM. ON GOVERNMENT OPERATIONS, ABUSE AND MISMANAGEMENT AT HUD: TWENTY-FOURTH REPORT, H.R.Doc. No. 977, 101st Cong., 2d Sess. (1990) [hereinafter HOUSE REPORT]. The subcommittee reported that, largely because of its administration of this program, the Department had become "synonymous with rampant abuse, favoritism, and

mismanagement." *Id.* at 111. The subcommittee identified Deborah Gore Dean — a prominent Department official — as a "key player" in the Department's giveaway game. "*Id.* at 4."

On July 7, 1992, a grand jury returned a thirteen-count indictment against Dean. The indictment charged Dean with three counts of conspiracy in violation of 18 U.S.C. § 371, one count of accepting an illegal gratuity in violation of 18 U.S.C. § 201(c)(1)(B), four counts of perjury in violation of 18 U.S.C. § 1621, and five counts of concealment and false statements in violation of 18 U.S.C. § 1001. The district court dismissed one of the counts brought under 18 U.S.C. § 1001. On October 26, 1993, a jury found Dean guilty of the twelve remaining counts.

The case against Dean, brought by an Independent Counsel, 28 U.S.C. § 594, centered on Dean's actions as an administrator of the Department's Section 8 Moderate Rehabilitation Program. Established in 1978, the program funded the upgrading of marginally deteriorated rental housing, and subsidized rents of lower-income families living in the improved units. To this end, Congress authorized the Department to pay owners of substandard housing, either directly or through public housing agencies, to upgrade their properties. Act of Oct. 31, 1978, Pub.L. No. 95-557, § 206(e), 92 Stat. 2080, 2092. Regulations governing the program, published in 1979 and first revised in 1982, made state and local public housing authorities primarily responsible for program administration. After deciding which substandard properties qualified for funding, 24 C.F.R. §§ 882.503-882.504 (1982), public housing authorities contracted with owners and developers to rehabilitate the properties. 24 C.F.R. § 882.505 (1982). For owners and developers of adequately upgraded properties, 24 C.F.R. § 882.506 (1982), additional contracts

guaranteed a fifteen-year stream of rental subsidies.[1] 24 C.F.R. §§ 882.403(c), 882.409 (1982). Under the regulations, the Department oversaw public housing authorities' administration of the Moderate Rehabilitation Program. The Department determined which public housing authorities were qualified to participate in the program, 24 C.F.R. § 882.501 (1982), and allocated funds to qualified public housing authorities under one-year contracts, 24 C.F.R. §§ 882.403, 882.501 (1982).

Problems with administration of the program began in 1984 when Congress altered the way in which the Department allocated funds to public housing authorities. HOUSE REPORT at 10. Before 1984, the Department distributed program funds to housing authorities based on a congressionally-mandated "fair share" formula. Housing and Community Development Act of 1974, Pub.L. No. 93-383, § 213(d)(1), 88 Stat. 633, 675. Under this formula, the amount of money a state received from the Department depended on its population, poverty, housing overcrowding, housing vacancies, the amount of substandard housing, and other criteria. HOUSE REPORT at 10. In 1984, at the Department's request, Congress waived the fair share funding requirement. Act of Nov. 30, 1983, Pub.L. No. 98-181, § 201(a)(2), 97 Stat. 1153, 1176; HOUSE REPORT at 10. Although this meant that the Department no longer had to allocate funds on a geographically-mandated basis, it did not leave Moderate Rehabilitation Program funding decisions utterly up to the discretion of Department officials. HOUSE REPORT at 10. Rather, Congress instructed the Secretary of Housing and Urban Development to develop a

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[1] Public housing authorities were also responsible for ensuring that rehabilitated properties were properly maintained, 24 C.F.R. § 882.516 (1982), and for administering the selection of lower-income families to live in the properties, 24 C.F.R. §§ 882.513-882.515 (1982).

formula to guide Department funding decisions, based on "the relative needs of different States ... as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing...." Act of Nov. 30, 1983, Pub.L. No. 98-181, § 201(a)(2), 97 Stat. 1153, 1176.

In 1984, when Congress waived the fair share funding requirement, Department regulations required allocation of moderate rehabilitation funding among public housing authorities based on an assessment of which housing authorities' applications had the best combination of five criteria.[2] 24 C.F.R. § 882.501 (1984). Nothing in Congress' waiver of the fair share funding requirement indicated that the regulation was to be repealed. Nor did the Department publish a notice suspending the regulation in the Federal Register. HOUSE REPORT at 12. Nevertheless, from 1984 through May 1988, Department officials did not allocate funds to public housing authorities on the basis of the criteria set forth in 24 C.F.R. § 882.501.

Department officials instead used "informal and undocumented discretionary methods to allocate funding."[3]

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[2] These criteria were: "(1) The demonstrated capacity of the [public housing authority] or its contractor(s) to provide the rehabilitation technical assistance to Owners required under the Program; (2) The availability of financing resources, both assisted and unassisted, as demonstrated through statements from financing agencies ...; (3) The [public housing authority's] experience with the Section 8 Existing Housing Program or the [public housing authority's] overall administrative capability; (4) The potential of achieving, as expeditiously as possible, the rehabilitation and leasing of housing units under this Subpart; and (5) The overall feasibility of the proposed program." 24 C.F.R. § 882.501 (1984).

[3] According to the Inspector General's report, the Department

OIG AUDIT REPORT at 5. As a result, "individual allocations were relatively large; certain states and [housing authorities] received a disproportionate share of funding; and several former [Department] officials and employees participated in the [Moderate Rehabilitation Program]." *Id.* at 6. Moreover, the Inspector General determined that, in many cases, decisions to fund specific rehabilitation projects were made at the Departmental level, rather than by local public housing authorities as required by 24 C.F.R. §§ 882.503-882.504 (1982). OIG AUDIT REPORT at 6 ("[W]e noted conditions that indicated the Headquarters selection was targeted for a specific project within a [public housing authority's] jurisdiction."). The Inspector General drew these conclusions by reviewing the selection process for 69 moderate rehabilitation projects. For 19 of these projects, the Inspector General found that developers had approached housing authorities with claims that if the authority applied for funding, an award would probably be forthcoming. *Id.* at 7. For 25 projects, developers seeking moderate rehabilitation awards paid consultants — including former Department officials — essentially to lobby the Department for funds. *Id.* And for 49 projects, ultimate awards made by the Department or the housing authority closely approximated the number of units owned or controlled by a specific developer. *Id.*

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based its discretionary approach to funding decisions on an oral opinion issued by the Department's General Counsel. Former Department Secretary Pierce testified at the House subcommittee hearings that, as he understood that opinion, Congress' waiver of § 213(d) meant that the criteria set out in 24 C.F.R. § 882.501 no longer applied to moderate rehabilitation funding decisions. OIG AUDIT REPORT at 5; HOUSE REPORT at 10-11. However, the former General Counsel denied having given such an assessment of § 213(d)'s effect on moderate rehabilitation funding decisions. HOUSE REPORT at 11.

II

According to the government (as we shall refer to the Independent Counsel), Dean was one of the officials who, ignoring the Department's published regulations, used her position to secure moderate rehabilitation funds for developers willing to pay huge fees to lobbyists with whom she associated. All three of the conspiracy counts in the indictment alleged that Dean had violated 18 U.S.C. § 371 by defrauding the United States and the Department.[4] The third conspiracy count added a charge that Dean conspired to violate 18 U.S.C. § 201(c)(1)(B) by accepting $4,000 in exchange for her performing official acts. Acceptance of the illegal gratuity was also the foundation of Count Four of the indictment, which charged Dean with violating 18 U.S.C. § 201(c)(1)(B).

The remaining eight counts of the indictment stem from statements Dean made before the Senate Committee on Banking, Housing, and Urban Affairs, in a hearing held on August 6, 1987, regarding her nomination to be the Department's Assistant Secretary of Community Planning and Development. Counts Five, Seven, Nine, and Eleven charged Dean with perjury in violation of 18 U.S.C. § 1621 for four statements Dean made at the Senate hearing. Those four statements were also the bases for Counts Six, Eight, Ten, and Twelve, which alleged that Dean engaged in a scheme to conceal material facts she had a duty to disclose, in violation of 18 U.S.C. § 1001.

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[4] The indictment charged that Dean had defrauded the United States and the Department by depriving the Department and the citizens of the United States of their right to Dean's "conscientious, loyal, faithful, disinterested and unbiased services" and their right to have the Department's "business and affairs conducted in an honest and impartial way."

We will deal first with Dean's contention that the jury did not have sufficient evidence before it to find her guilty on any of these twelve counts, a contention on which she can prevail only if, viewing the evidence in the light most favorable to the government, we conclude that no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson* v. *Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). As to the first three counts, we are mindful that "[p]articipation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a 'development and a collocation of circumstances.'" *Glasser* v. *United States*, 315 U.S. 60, 80, 62 S.Ct. 457, 469, 86 L.Ed. 680 (1942) (citation omitted).

A. Conspiracy Charges

To establish a conspiracy under 18 U.S.C. § 371, the government had to prove: (1) Dean agreed with at least one other person to defraud the United States or, for Count Three, to commit an offense against the United States by violating 18 U.S.C. § 201(c)(1)(B); (2) Dean knowingly participated in the conspiracy with the intent to defraud the United States or to commit an offense against the United States; and (3) at least one overt act was committed in furtherance of the conspiracy. *United States* v. *Treadwell*, 760 F.2d 327, 333 (D.C. Cir. 1985), *cert. denied*, 474 U.S. 1064, 106 S.Ct. 814, 88 L.Ed.2d 788 (1986). The fraud covered by § 371 "reaches any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." *Tanner* v. *United States*, 483 U.S. 107, 128, 107 S.Ct. 2739, 2751, 97 L.Ed.2d 90 (1987) (internal quotations and citations omitted). Thus, if the government's evidence showed that Dean conspired to impair the functioning of the Department of Housing and Urban Development, "no other form of injury to the Federal Government need be established for the conspiracy to fall under § 371." *Id.*

According to the indictment, all three conspiracies followed the same pattern. Developers seeking moderate rehabilitation funding hired Dean's co-conspirators, "consultants" who held themselves out as able to obtain moderate rehabilitation awards. Dean used her influence at the Department to make sure that projects operated by her co-conspirators' clients received program monies or other favorable treatment at the Department. Dean's co-conspirators were paid substantial "consulting fees" for their services. In exchange for Dean's facilitating decisions favorable to their clients, her collaborators helped her professionally and politically, worked for free on her behalf, and in one instance, gave her $4,000. To hide the conspiracies, Dean concealed the way the Department actually made its funding decisions.

Dean worked for the Department of Housing and Urban Development from 1982 to 1988. She began her tenure as a Special Assistant to Department Secretary, Samuel R. Pierce, Jr., and as Director of the Executive Secretariat. HOUSE REPORT at 86-87. In June 1984, she became Secretary Pierce's top aide, with the title of Executive Assistant. *Id.* at 87. She resigned from this position in July 1987, after she was nominated to be Department Assistant Secretary of Community Planning and Development. Pending Senate Committee hearings on her nomination, Dean continued to work for the Department as a paid consultant. The Senate did not confirm Dean as Assistant Secretary, and on January 8, 1988, she left the Department.

At trial, the government showed that Dean took an active role in administering the Moderate Rehabilitation Program after she became Secretary Pierce's Executive Assistant. According to the testimony of former Department officials, Dean's power stemmed from Secretary Pierce's remote and uninvolved management of the Department. These officials characterized Secretary Pierce's management style as "very strange and interesting," "totally hands off," "detached," and

"not involved to any significant degree." In one official's view, responsibility for "running the Department," "up to and including funding decisions," fell to Secretary Pierce's Executive Assistant, the position Dean held from June 1984 to July 1987.

A Department employee responsible for releasing moderate rehabilitation funds to the field testified that she met with Dean in September 1985, and Dean told her "which units [the Department] would fund," often referring by name to individual developers' or consultants' projects. This official also testified that there were "no selection criteria for where the funding would ultimately go" and that funding decisions were "political." In some cases, public housing authorities had not even requested money for the projects Dean directed the official to fund, and an executive assistant would "work with Debbie ... to be sure that the application was in and on file before the money would be released." Another official recalled a meeting at which Dean dictated "which particular public housing authorities were to receive an allocation of Moderate Rehabilitation units." Again, for a few of the public housing authorities Dean had named as funding recipients, there were no applications requesting funds, and Dean said that "she would take care of making sure that the letters were found or were obtained." Dean herself behaved as though she had the power to approve grants of moderate rehabilitation funding at the Department, as suggested by a February 1, 1985, memorandum regarding the departure of the Assistant Secretary for Housing/Federal Housing Commissioner. Dean wrote the acting commissioner that Secretary Pierce's Office would concur on all moderate rehabilitation funding decisions "not previously approved by both [the former commissioner] and myself," until a new housing commissioner was named.

To this general evidence — Dean's facilitation of the funding of unnamed projects connected with unnamed developers and consultants, and her memorandum suggesting

that she had the authority to approve moderate rehabilitation awards — the government added specifics, purportedly linking Dean to various co-conspirators and to funding decisions for particular moderate rehabilitation projects. Whether this specific evidence, when added to the general, supports Dean's conviction on any of the three conspiracy counts is in dispute.

1. Count One

As to the conspiracy alleged in the first count of the indictment, the co-conspirators allegedly were Dean, John N. Mitchell,[5] Jack V. Brennan, Louie B. Nunn, and Richard D. Shelby. Nunn and Shelby were consultants who assisted developers in obtaining moderate rehabilitation funds. Nunn and Shelby engaged Mitchell to help them obtain federal housing money for these projects. Mitchell and his colleague Brennan worked for Global Research International, Inc., a consulting firm Mitchell formed in 1979.

The indictment alleged that Dean and these four individuals conspired to defraud the government and committed overt acts with respect to four Florida housing developments: Park Towers Apartments, Marbilt, South Florida I and Arama. Martin Fine, a Florida housing developer, hired Shelby to help him get funding to develop the Park Towers Apartments. Another Florida developer, Aristides Martinez, retained Nunn to get funding for the other three housing projects — Marbilt, South Florida I, and Arama.

Mitchell was Dean's mother's companion and lived with Dean's mother in the Georgetown section of Washington, D.C., and at the Dean family Potomac River estate in Maryland. Mitchell and Dean had a relationship comparable to father and daughter. Mitchell spoke of Dean as his daughter. In correspondence, Dean called Mitchell "Dad"

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[5] Mitchell died in 1988 and therefore did not testify at trial.

or "Daddy," and at trial, she described Mitchell as her "mentor/father-like person." On Christmas Day 1986, Mitchell gave Dean a check for $500, and he paid approximately $3,300 for her birthday party in 1987. Mitchell also helped Dean advance in her career. Dean used his name as a reference in a 1984 security investigation, and he aided Dean in getting a job at the Department of Energy, where she worked before coming to the Department. He telephoned a Senator in support of Dean's 1987 nomination for Assistant Secretary and asked Shelby to do "whatever [he] could to support her candidacy." He called the Director of the Federal Bureau of Investigation regarding the Bureau's investigation of Dean for that nomination. According to the government, Dean's close relationship with Mitchell, as well as the professional favors he did for her, gave her an improper personal interest in assisting Mitchell in Department matters.

With respect to the Park Towers Apartments in Miami, the government's evidence of overt acts taken to further the conspiracy was as follows. Martin Fine, the developer associated with this project, hired EMF & Associates, a government relations firm headed by Eli M. Feinberg, to help him obtain enough federal money to rehabilitate the building's 143 apartments. Sometime in March 1985, Feinberg hired Richard Shelby to act as a consultant on the Park Towers project. Shelby asked Mitchell for assistance in obtaining the desired moderate rehabilitation funds, agreeing to split whatever fee he received from EMF with Mitchell. Shelby ultimately received $225,000 for his services connected with the project.

To obtain moderate rehabilitation funding for the Park Towers project, Shelby brought an application to the Department, met with Department officials "three or four times" and made "numerous" telephone calls to different Department officials. Shelby testified that he dealt primarily with Silvio DeBartolomeis (who was at the time Deputy

Assistant Secretary of Housing),[6] *and also with Secretary* Pierce's Special Assistant R. Hunter Cushing and Dean. The Florida public housing authority received enough funding to rehabilitate 266 units in late November 1985. On May 28, 1986, in a letter signed by DeBartolomeis, the Department approved the Florida housing authority's request that the Department waive certain regulations that would have prevented Park Towers from participating in the Moderate Rehabilitation Program and from receiving a share of the funds allocated to the Florida housing authority.

The government linked Dean to decisions made regarding the Park Towers Apartments with the following evidence. Dean's calendar reflected that from August 1, 1985, to December 17, 1987 — a period of more than two years — she scheduled thirteen lunch dates with Shelby. During this time, she also scheduled six meetings with Shelby. After a lunch on September 9, 1985 — at which Mitchell was also present — Shelby sent Dean a handwritten note that began: "Enclosed please find the information concerning the Section 8 Moderate Rehab Program in Miami...." The note concluded: "As always thank you for that time and effort which you must necessarily expend on my behalf. I appreciate your friendship." On February 3, 1986, Shelby sent Dean information regarding Park Towers Apartments' eligibility to receive moderate rehabilitation funding. Dean's calendar shows that she had scheduled a lunch with Shelby that day. Also on that day, the project developer, Fine, wrote a memorandum to the Park Towers file reporting that

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[6] DeBartolomeis was another high-level Department official responsible for the mismanagement of the Moderate Rehabilitation Program. He held a number of positions at the Department, including acting Assistant Secretary for Housing/Federal Housing Commissioner. He also dated Dean. He pled guilty to three charges arising from his conduct at the Department. As part of his plea bargain agreement, he testified against Dean.

Feinberg had "a very good telephone conversation with" Shelby. According to the memorandum, Shelby had "lunch with his friend at HUD," who "indicated that this matter could be dealt with in a favorable manner."

We conclude that this evidence — whatever it may say about Mitchell and Shelby — is insufficient to connect Dean to a conspiracy involving the Park Towers project. The most damning thing the government points to is a memorandum, written by someone who had spoken to someone who had spoken to Shelby, stating that Shelby's "friend" at the Department said problems with the project could be favorably handled. But no evidence ties Dean to the resolution of any of these problems — the waiver allowing Park Towers Apartments to receive funding was signed by DeBartolomeis, whom Shelby identified as his primary Department contact, and came from DeBartolomeis' office. The only other piece of evidence linking Dean to Park Towers is the suggestion in a note written from Shelby to Dean that the two had discussed the project over lunch. Nothing shows that Dean had anything to do with the Department's initial decision to allocate funds to the Florida public housing authority. This evidence simply cannot support a conclusion that Dean defrauded the United States and the Department by facilitating Department decisions favorable to the Park Towers project.

With respect to the Marbilt project, the government's evidence of overt acts by Dean and her alleged co-conspirators consisted mainly of a letter Dean sent to Mitchell, and two memoranda. The letter, in which Dean addresses Mitchell as "Dear Dad," responds to an inquiry Mitchell made on behalf of Nunn and Martinez, apparently regarding the Department's denial of Martinez' requests for

loan increases.[7] After explaining that "the Department tried as best it could to be lenient," Dean wrote:

> As you know, I stand behind the decision of the carreer [sic] people in Headquarters. Intervening in a situation like this would be like jogging through quicksand. I think it's time we say "adios".

The government claims that the sentence "I think it's time we say 'adios' " would justify the jury in concluding that Dean and Mitchell were working together on this matter. We do not understand how. The two sentences preceding "adios" suggest, if anything, that Dean was refusing to get involved, that she supported the Department's adverse decision. In context, the sentence the government stresses may be plausibly interpreted as Dean's advising Mitchell that the Department's position on this matter was final. The sentence is insufficient to warrant any conclusion that Dean used her official position at the Department to further Mitchell's or Martinez' interests regarding Marbilt.

With respect to the South Florida I project, the evidence is also too weak to support Dean's conviction on Count One. In May 1986, the developer of the South Florida I project, Martinez, received a letter from the Dade County housing authority acknowledging receipt of his application for moderate rehabilitation funding. The letter continued:

> As you know we have no uncommitted Section 8 Moderate Rehabilitation monies. When we receive additional monies, we will choose applications based on our selection criteria.

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[7] The Department later reversed its position and authorized the loan increases Martinez requested. Dean forwarded a memorandum allowing the loan increases to Mitchell with a note that read: "To Daddy. F.Y.I."

Martinez sent a copy of this letter to Nunn. In an accompanying letter, Martinez said the Dade County agency had suggested his project would receive funding from the next allocation of funds the agency received from the Department. Implicit in the letter is Martinez' understanding that Nunn was to secure approval for an award of federal funds to the Dade County agency. Martinez wrote that it "would be much better" if the Department awarded funds sufficient to upgrade 219 units, the number of units for which he requested funding in his application, so that "there would be no confusion as to whose proposal it is."

Nunn sent copies of Martinez' and the agency's letters to Brennan, Mitchell's colleague at Global Research, Inc. As they both acknowledged at trial, Brennan then met with Dean on June 6, 1986. At the meeting, which lasted only a few minutes, Brennan asked Dean to look into the status of the South Florida I project and gave Dean copies of the two letters. Dean forwarded the letter from the state agency to the Federal Housing Commissioner. In September 1986, an official directed the preparation of documents for several funding awards to public housing authorities. Included in the list of awards was one for 315 units to the Dade County housing authority. The official's rough notes indicated the 315 units came from the addition of "96" and "219" — the figure 219 corresponding to the number of units for which Martinez wanted funding. A memorandum of a September 18, 1986, telephone call from Dean indicated that she had made certain changes to the list of awards, but the memorandum said nothing about the award to the Dade County authority.

We find the evidence regarding the funding of the South Florida I project insufficient to constitute an overt act in furtherance of the conspiracy alleged in Count One. The government showed only that Dean briefly met with Brennan and that he gave her two documents. Nothing else — no internal Department document, no correspondence between

Dean and her alleged co-conspirators, no testimony of the alleged co-conspirators — showed that Dean had anything to do with an award of moderate rehabilitation funding to the project. In its brief, the government makes much of Dean's failure to tell Secretary Pierce of Brennan's request. Brief for United States at 21. We do not attach significance to this omission. Dean's position required that she operate autonomously of Secretary Pierce in some instances. Without more concrete evidence linking Dean to the Department's decision to award funding to the South Florida I project, the jury could not reasonably conclude that Dean took part in a conspiracy with respect to this project.

With respect to the Arama project, the chief piece of evidence linking Dean to an improper Department decision is a July 5, 1984, letter Dean wrote to Nunn about Arama Partnership's request for additional funding. The letter reads:

> The Department is now in the process of completing the papers for the 293 units to the Public Housing Authority in Florida. Let me assure you that all the necessary paperwork for the units will be transmitted by the end of this week and that Arama Partnership will definitely receive these units from HUD.

This letter is damaging to Dean for two reasons. First, she wrote it before the Federal Housing Commissioner, the Department official with final responsibility for authorizing the disbursement of housing funds to public housing authorities, had notified the Florida public housing authority that the Department had approved its request for funding. Second, the letter assured Nunn that the Arama Partnership, rather than the Florida housing authority, would receive funding. Both the letter's timing and its reference to project-specific funding suggest that federal regulations — which made public housing authorities responsible for selecting

which rehabilitation projects to fund, 24 C.F.R. §§ 882.503-882.504 (1982) — had been bypassed. In letters to other developers who inquired about funding, Dean wrote that regulations "prohibit HUD from making project specific allocations."

Given these irregularities, the July 5, 1984, letter is sufficient to support the verdict on Count One that Dean committed an overt act in furtherance of a conspiracy to defraud the Department. Dean testified at trial that she had asked the Federal Housing Commissioner whether the Arama project had been funded. The Commissioner confirmed that it had been, and her letter simply passed this information along to Nunn. But the former Housing Commissioner testified otherwise. Although he did "not remember Deborah Dean asking" him to sign off on the funding document, he stated that he did not know that the 293 units would go to a specific project in Miami. According to the former Commissioner, the letter ran contrary to the Department's prohibition against project-specific awards. From this evidence, a jury could conclude that Dean had acted with Mitchell and Nunn to defraud the federal government by impairing the functioning of the Department.

In sum, the government's evidence is sufficient to show that Dean knowingly engaged in overt acts in furtherance of a conspiracy to defraud the federal government with respect to the Arama development. A reasonable jury could not, however, conclude from the evidence presented at trial that Dean had collaborated with her alleged co-conspirators to facilitate the Department's decisions regarding the other projects named in Count One — Park Towers, Marbilt, and South Florida I. To establish a conspiracy, the government need show only that one of the conspirators engaged in a single overt act to further the conspiracy. *Braverman* v. *United States*, 317 U.S. 49, 53, 63 S.Ct. 99, 101, 87 L.Ed. 23 (1942). Thus, on the strength of the evidence relating to the Arama project, we sustain Dean's conviction on the first

conspiracy count. The overt acts proved by the government necessarily delineate the scope of the conspiracy. Cf. *Fiswick* v. *United States*, 329 U.S. 211, 216, 67 S.Ct. 224, 227, 91 L.Ed. 196 (1946) ("The overt acts averred and proved may thus mark the duration, as well as the scope of the conspiracy."). The conspiracy the government proved involved only Dean, Mitchell and Nunn and related only to the funding of the Arama project. As discussed below, see infra pp. 666-67, we remand the case for the district court to reconsider its sentencing decision in light of this more limited conspiracy.

2. Count Two

The second conspiracy count involved Dean, Andrew C. Sankin and, to a lesser degree, Thomas R. Broussard and Richard D. Shelby. Dean and Sankin violated 18 U.S.C. § 371, the government charged, with respect to two moderate rehabilitation projects: the Necho Allen Hotel and the Regent Street Apartments. According to the indictment, Dean and Sankin also conspired with Broussard on the Alameda Towers development and with Shelby on the Foxglenn and Eastern Avenue projects. The evidence was, we hold, insufficient to convict Dean with respect to the Regent Street, Foxglenn, and Eastern Avenue projects. However, there was sufficient evidence to sustain Dean's conviction for conspiring to defraud the government in regard to the Necho Allen Hotel and the Alameda Towers projects.

Sankin, a 1984 graduate of Georgetown University Law Center, began working as a consultant on Department matters immediately after he finished law school. He met Dean in the early 1980's through their mutual acquaintance, DeBartolomeis. In 1984, Sankin also began managing the Stanley Arms Apartments, a 40-unit apartment building in Washington, D.C., owned by the Dean family. Dean was Sankin's primary contact regarding Stanley Arms management matters.

Although Sankin was paid a percentage of the Stanley Arms' rental income for managing the complex, he performed other services for the Dean family for which he received no compensation. He prepared a lengthy request for permission to raise rents at the rent-controlled Stanley Arms Apartments. According to Sankin, the usual fee for preparing such an application was around $20,000. Sankin testified that he asked Dean whether she would pay him for drafting the rent-increase application and that she responded that "she had no intention of doing so." Sankin did not push the issue. A "potential rift with Ms. Dean over this issue," he testified, could have jeopardized the "considerable business [Sankin did] with the Department of Housing and Urban Development." Other evidence also shows that Sankin thought his work at the Stanley Arms Apartments was linked to his Department-related business. When he received a lump sum fee payment for his consulting services, Sankin gave the Stanley Arms' day-to-day manager a bonus, because he "felt that the property management work that [the employee] was doing on the Stanley Arms was ... connected to and was important with the consulting work [Sankin] did at HUD."

Sankin and Dean's relationship was not limited to his management of her family's property. In addition to the work he did at the Stanley Arms Apartments, Sankin accompanied Dean to the closing for a condominium she bought and advised her regarding a dispute over maintenance fees with the condominium association. At Dean's suggestion, he also contributed to several political and charitable organizations.

The government introduced evidence showing that Sankin and Dean discussed moderate rehabilitation funding. On the basis of Sankin's credit card receipts, the jury could have concluded that from May 1986 to September 1987 Sankin entertained Dean and discussed moderate rehabilitation funding or other Department matters with her on eight

occasions. Five of the receipts referred to Dean by name. Three others described Sankin's guest in a way that would permit a jury to infer that he had entertained Dean.

One of Sankin's clients was John B. Rosenthal, developer of the Necho Allen Hotel and Regent Street Apartments. The Necho Allen was a 65-unit moderate rehabilitation project for the elderly in Pottsville, Pennsylvania. Rosenthal hired Sankin to help him obtain the Department's permission to charge rents at the Necho Allen Hotel exceeding those allowed by Department regulations. According to a December 17, 1984, letter from Rosenthal to Sankin, Rosenthal agreed to pay Sankin $10,000 if the Department approved the request for the Necho Allen exception before January 1, 1985. Although the Regional Housing Commissioner supported the Department's granting the Necho Allen request, the Department initially denied it. On March 1, 1985, however, a memorandum from Secretary Pierce's office reversed this position and approved the exception to Department regulations. The memorandum bore a duplicate of Secretary Pierce's signature, authorized by Dean.

Sankin testified that part of his job as a consultant on the Necho Allen project was to "act as an advocate on behalf of the client with the Department and with Deborah Dean." It was his understanding that as the Secretary's Executive Assistant, Dean was in a position to waive Department regulations regarding rents for rehabilitated properties. Sankin delivered the materials requesting the rental exception to Dean and met with Dean and several members of her staff regarding the project. The Regional Housing Commissioner made a second request, in February 1985, to the Secretary asking for approval for the Necho Allen exception rents. A form from the Secretary's office stated that the letter was "taken to Deborah Dean ... on 2/28/85 (per her request). She will prepare final response." A February 12, 1985, letter from Rosenthal to Dean — written before the memorandum

approving the exception had been issued — thanked Dean "for the support [she had] provided in securing exception rents" and asked her to "provide evidence that exception market rents have been granted to the HUD area office."

The government contends, and we agree, that this evidence shows that Dean overruled Department officials to help Rosenthal obtain increased rents on the Necho Allen property. Dean asked that paperwork regarding the Necho Allen request for exception rents be directed to her office, and an internal Department document indicated that she would prepare the response. She authorized the use of Secretary Pierce's name in connection with issuance of the memorandum granting the Necho Allen petition. Moreover, Rosenthal communicated directly with Dean regarding the project, thanking her for her efforts and asking for confirmation of the Department's grant of the exception. From this evidence, a reasonable jury could conclude that Dean improperly used her position at the Department to facilitate approval of the Necho Allen petition for Sankin's client.

Rosenthal also retained Sankin to help him obtain additional moderate rehabilitation funding for the Regent Street Apartments in Philadelphia. Rosenthal's company had at first acquired only five of six buildings on a block and had obtained federal funding to upgrade units in those buildings. After the company bought the sixth building, it sought additional moderate rehabilitation funds to upgrade the 25 units in that building. Sankin testified that he contacted Dean to ask if "there was any possibility of receiving Mod Rehab funding for this housing authority and this property." Rosenthal testified that he met with Dean to "make [a] case for the ... additional Section Eight grants [he] needed" for the Regent Street project. A letter dated July 16, 1985, from Dean to Rosenthal informed him that "all Mod-Rehab units have been committed for Fiscal Year 1985." Dean also expressed her willingness to "discuss [the] Regent Street

Project" near the beginning of the next fiscal year, but cautioned that "competition for these units is very intense."

Two internal Department documents dated September and November 1985 indicate that the Department allocated funds to rehabilitate 12 and 13 units to the Philadelphia Housing Authority. Dean's name appears on neither of these internal documents. Although the Department official responsible for releasing federal funds to the field did not know whether these documents described funds that in fact went to the Regent Street project, the project ultimately received moderate rehabilitation funding — enough for 13 units in 1985 and for 13 units in 1986. Sankin said that Dean notified him about the funding award.

The evidence on the Regent Street project is insufficient to show that Dean conspired with Sankin to direct funding to the project. Connecting Dean to the project are only Sankin's and Rosenthal's statements that they discussed with Dean their desire to obtain federal funds. They did not testify that Dean told them that the project would receive funding, and the letter from Dean to Rosenthal mentions only generally her amenability to discuss funding for the project at a later time. No internal Department documents connect Dean to the funding decision. A jury could not reasonably infer from this sparse evidence that Dean attempted to facilitate the Department's funding of the Regent Street project.

Sankin, together with Thomas Broussard, also worked as a consultant for the Alameda Towers project, a housing development in Puerto Rico. Funds became available for the project after the Department withdrew money allocated to rehabilitate around 600 units in other Puerto Rican housing developments because of improprieties regarding the funding of those projects. After learning of the unexpected availability of moderate rehabilitation funds in Puerto Rico, Sankin asked Dean if he could solicit a client to compete for the funding. According to Sankin, Dean did not think him

"experienced enough to work with this program" and suggested he team up with someone more seasoned in Department matters, such as Broussard.

Sankin and Broussard joined forces, and the two began looking for a development project that would qualify for the funds allocated to the Puerto Rico housing authority. Ultimately, in October 1985, Sankin and Broussard entered into an agreement with Cleofe Rubi and Eduardo Ballori. Broussard told Rubi and Ballori that he had "received assurances from people high up in HUD who were decisions makers ... that this kind of an application would be favorably looked upon" and that he "thought we could get 150 units without any difficulty based on that application." According to Rubi, Broussard claimed that funds to rehabilitate "150 of those units [had been] assigned to him by the Secretary's office and by Mrs. Debbie Dean."

Rubi and Ballori agreed to pay Sankin and Broussard $100,000 each upon the granting of funding sufficient to rehabilitate 300 units in the Alameda Towers development. The Department funded the Alameda Towers project, and Sankin and Broussard each received $75,000. Rubi testified that neither Broussard nor Sankin agreed to do any work in exchange for receiving these payments, but that he simply "bought" the right to receive moderate rehabilitation funding from them.

Both Sankin and Broussard testified to Dean's involvement in the Alameda Towers funding decisions. Broussard contacted Dean after Sankin approached him about doing business in Puerto Rico. In this conversation, the first of 20 to 25 telephone calls between Dean and Broussard, Dean "basically indicated to [Broussard] an application for approximately 150 units, maybe as many as 200 units would be looked upon favorably." In a letter postmarked June 10, 1985, Broussard wrote Dean that the Department's regional administrator for Puerto Rico was "putting [him] in contact with a group in old San Juan that is working on units."

After meeting with Rubi and Ballori, Broussard testified that he spoke with Dean, to "give her the details of [the] application." According to Broussard, Dean was pleased with the proposal and she "indicated that when it came up for approval it would have her support and that [Broussard] should count on getting at least 150 units." From Broussard's testimony and his letter to Dean, we find the jury could reasonably have concluded that Dean used her position at the Department to facilitate funding for the Alameda Towers project.

As additional evidence of overt acts taken in furtherance of the conspiracy charged in Count Two, the government linked Dean to Department decisions regarding the Foxglenn and Eastern Avenue projects. Sankin collaborated with Shelby, a political consultant also named as a co-conspirator in the first conspiracy count, to obtain moderate rehabilitation funding for these projects. Sankin wanted to work with another person on Department consulting matters because he feared that his direct involvement in Department matters might appear improper, given his close friendship with DeBartolomeis. Sankin testified that Dean referred Shelby to him. Shelby's job was to "work with the officials" at the Department, while Sankin dealt with the developer and the local housing authorities. With this division of responsibilities, Sankin's communication with Dean regarding the projects was limited, although he said "she certainly knew that [Sankin] was working with Rick Shelby and Mr. Shelby would ask her about [Foxglenn] and [Sankin] discussed it with her from time to time as well."

Shelby testified that Dean was his primary Department contact for the Foxglenn and Eastern Avenue projects, but that he also met with R. Hunter Cushing and, on the Foxglenn project, DeBartolomeis. For each project, Shelby met with Dean three or four times and spoke with her on the phone. An employee who reported to Dean in 1986 testified that Dean brought Shelby into her office and told her "to

take good care of him." The Foxglenn project was awarded moderate rehabilitation funding, and Shelby and Sankin each received $110,000 for their services. Shelby and Sankin were also paid $57,000 and approximately $20,000, respectively, for their work on the Eastern Avenue development, less than the sum for which they had initially contracted because the developer who hired them as consultants did not receive funding. Shelby confirmed that he received these consulting payments because he had "access to high-ranking government officials," of whom Dean was one.

We believe the evidence connecting Dean to the Foxglenn and Eastern Avenue projects is too tenuous to support a jury conclusion that Dean, Shelby and Sankin conspired with regard to these projects. Nothing shows that Dean had anything to do with the Department's decisions to award or not to award funding to these projects. The government's evidence simply shows that Dean met with Shelby and Sankin and that she discussed the Moderate Rehabilitation Program at these meetings. No evidence directly links Dean to any Department decision, favorable or unfavorable, made regarding these projects.

In conclusion, the evidence relating to the Necho Allen Hotel and the Alameda Towers development was sufficient to establish that Dean knowingly participated in a conspiracy to facilitate decisions favorable to the developers of these projects, and thus to Sankin. The evidence on the Regent Street, Eastern Avenue and Foxglenn projects does not support Dean's conviction. As with Count One, see supra p. 651, we sustain Dean's conviction, but remand the case so that the trial court may reconsider Dean's sentence in light of our decision.

3. Counts Three and Four

Count Three charged Dean with conspiring with Louis Kitchin, another Department consultant, to defraud the

United States, charges paralleling the allegations of Counts One and Two. The government supported this charge with evidence linking Dean and Kitchin to funding decisions made regarding four projects: Heritage Village in Atlanta, the Cutlerwood and Springwood Apartments in Miami, and the Woodcrest Retirement Center in San Diego. In addition, Count Three accused Dean and Kitchin of conspiring to violate 18 U.S.C. § 201(c)(1)(B), a bribery statute, because Dean accepted $4,000 from Kitchin. Count Four of the indictment charged Dean with violating 18 U.S.C. § 201(c)(1)(B). We hold that the evidence was sufficient to support a conviction on both counts.

Before he began working on Department matters in April 1986, Kitchin was a political consultant and campaign manager. Kitchin knew Dean through mutual political connections before she began working at the Department. Kitchin described Dean as "the most knowledgeable person" at the Department and admitted that he and Dean had discussed his desire to obtain Moderate Rehabilitation Program funds for his clients' projects. Jack Jennings, Kitchin's business colleague, testified that Kitchin would "talk with Debbie to try to get mod rehab units, and on several occasions, [Kitchin] told [Jennings] that he was able through talking to her to get the mod rehab units." Dean's secretary testified that at some time Dean might have instructed her to tell Kitchin that moderate rehabilitation funds were "coming," in response to an inquiry from Kitchin.

At trial, Kitchin acknowledged approaching Dean on behalf of his Atlanta client, Nick Bazan, and explained that Bazan wanted to get funding to rehabilitate 200 units in Atlanta. According to Kitchin, Dean told him "that number for Atlanta could be done." Bazan, the Atlanta developer, testified that Kitchin said he "would be able to obtain some Mod Rehab units" because "he had a friend, Debbie Dean ... and that he could talk to her ... or that office ... or he knew

people in Washington." Bazan also said Kitchin told him Kitchin planned to "have lunch with Debbie Dean ... to talk to her about obtaining the ... units."

Following Kitchin's advice, Bazan had an Atlanta public housing authority sign a letter formally requesting moderate rehabilitation funding, which Bazan delivered to Kitchin. Less than a week later, on October 30, 1986, the Department allocated to the Atlanta housing authority enough funding to rehabilitate 200 units. Ultimately, however, the housing authority did not award funding to the Heritage Village project. Since the contract between Bazan and Kitchin provided that Bazan would pay Kitchin only if the project were funded, Kitchin received nothing for what he had done in connection with the Heritage Village project.

In addition to Kitchin's and Bazan's testimony, two documents connect Dean to the Heritage Village project. The first showed that at some point Dean sent a handwritten list of nine different "Mod Rehab" projects, noting the number and types of units for each project, to the Federal Housing Commissioner. The list included "City of Atlanta, Ga. Dept. of Com. Dev." with the notation "200 2 bdrms." At the bottom of the list, Dean wrote: "Let me know when in action so I can call OMB. Very Important!" The second piece of evidence linking Dean to the Heritage Village project is a January 20, 1987, memorandum from Kitchin to Dean asking that the Department characterize Bazan's application as involving a refinance, rather than a purchase, transaction. At the bottom of Kitchin's memorandum, Dean wrote "Please see this through."

From this evidence, a reasonable juror could conclude that Dean collaborated with Kitchin to attempt to direct moderate rehabilitation funding to the Heritage Village project. The government presented evidence that Kitchin claimed he could get funding through Dean. Dean took action on a memorandum sent to her by Kitchin regarding the Heritage Village development. There is evidence showing

that Dean was responsible for sending funding for the rehabilitation of 200 units to the Atlanta housing authority. That Bazan, Kitchin's client, did not receive this funding does not alter our conclusion that the evidence was sufficient to show a conspiracy. The conspiracy, rather than the accomplishment of its objectives, is the gravamen of this offense. *United States* v. *Evans*, 572 F.2d 455, 483 (5th Cir.), *cert. denied*, 439 U.S. 870, 99 S.Ct. 200, 58 L.Ed.2d 182 (1978); cf. *United States* v. *D'Amato*, 39 F.3d 1249, 1257 (2d Cir. 1994).

As to the Cutlerwood and Springwood Apartments, Kitchin testified that he went "through the same process" that he followed for Heritage Village. He said he discussed with Dean "the units going to Miami" and that Dean replied "she'd do what she could to help." Claude Dorsy, vice president of First Florida Equities, Ltd., testified that his company agreed to pay Kitchin $1,000 for each apartment unit for which it received moderate rehabilitation funding. First Florida Equities paid Kitchin $203,000 when the Department allocated the Dade County housing authority funding to rehabilitate 203 units. The only piece of documentary evidence linking Dean to the Cutlerwood and Springwood projects is a list, in her handwriting, of sixteen projects. Next to "Metro Dade" is the notation "letter" and the figure "203," broken down as "153-1 BR, 48-2 BR, 2-0 BR."

Again, we find this evidence sufficient to constitute an overt act in furtherance of the conspiracy charged in Count Three. Under Department regulations, decisions whether to fund a specific moderate rehabilitation project were to be made by public housing authorities, not Department officials. 24 C.F.R. §§ 882.503-882.504 (1982). Dean's handwritten note recording precisely the number of units for which Kitchin's client wanted funding suggests that she and Kitchin conspired to violate these provisions. From this note, Dean's ties to Kitchin, and Kitchin's testimony that he had discussed

the project with Dean, a reasonable jury could conclude that Kitchin and Dean had conspired to defraud the Department by directing moderate rehabilitation funds to Kitchin's client.

The final project involved in Count Three was the Woodcrest Retirement Center in San Diego, a development backed by Jack K. Jaynes. The lender on the project — Dean Witter — hired Kitchin to iron out problems the Woodcrest venture had experienced in its quest for moderate rehabilitation funds. These problems were significant. By January 1987, the Woodcrest application for funding had been denied moderate rehabilitation funding at three levels of the Department — the local Los Angeles office, the San Francisco regional office and the central office. Denial of the application was based on the conclusion that market conditions for retirement centers in San Diego would not support the kind of development Jaynes proposed.

According to Kitchin, he contacted "[e]veryone from the Los Angeles HUD office to San Francisco and finally to Washington." His contacts in Washington included Dean. In a handwritten note dated December 30, 1986, Dean asked the Federal Housing Commissioner [Thomas Demery] to "please look into" the denial of the Woodcrest proposal, because "an independent analysis seems in order."

A member of the Federal Housing Commissioner's staff sent a memorandum to Dean on February 5, 1987. According to the memorandum, the "[d]ecision on Jaynes look[ed] OK." Dean wrote back: "Could you be more specific about Jaynes. What does 'OK' mean exactly? Will we do the Hdqs study?" Another memorandum from the staff member followed. His office had analyzed the market for retirement centers according to a corrected method proposed by the developer. Under the modified analysis, the data supported the developer's conclusion that the market would support the Woodcrest project. Dean rejoined: "If we have a way to do it — why can't we?" By May 21, 1987, the Department had concluded that the proposal

warranted "reconsideration" and that the sponsor should be told to submit a "firm commitment application" to the Los Angeles office.

This evidence is sufficient to show that Dean conspired with Kitchin to use her influence at the Department to facilitate a decision favorable to Kitchin's client. Kitchin testified that he contacted Dean on behalf of his clients who had business with the Department. In documents that refer by name to the Woodcrest proposal, Dean twice asked for another analysis of the market conditions for San Diego retirement centers. The Department reevaluated the proposal. A reasonable jury could conclude that Dean — in violation of regulations prohibiting Department officials from making funding decisions for specific projects, 24 C.F.R. §§ 882.503-882.504 (1982) — was behind the Department's reversal of its opinion on the project, a decision that directly benefited Kitchin and Kitchin's client.

The evidence also supports the jury's finding that Dean violated and conspired to violate 18 U.S.C. § 201(c)(1)(B), which is set forth in the margin.[8] At trial, both Dean and Kitchin admitted that Dean had accepted Kitchin's check for $4,000 in April 1987. Beyond this, Dean's and the government's versions of events diverge. According to Dean, Kitchin wanted to buy an apartment in the Watergate building, and she had agreed to help him find and decorate an apartment for $2,000. The rest of the money was to pay for furnishings for the apartment. Dean said that in June 1987, Kitchin told her he no longer wanted to buy a

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[8] 18 U.S.C. § 201(c)(1)(B) provides: Whoever ... otherwise than as provided by law for the proper discharge of official duty ... being a public official ... directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official ... shall be fined under this title or imprisoned for not more than two years, or both.

Washington apartment, whereupon she immediately wrote him a check for $4,250. Although Dean's check register indicated she had written a $4,250 check to Kitchin on June 15, 1987, she acknowledged that on that date there was not enough money in her account to cover the check. Kitchin never cashed the check, although Dean said she repeatedly asked him to do so. Dean said she gave Kitchin $500 in cash on two occasions, as partial repayment of the $4,000.

The government's evidence undercuts Dean's story. At trial, Kitchin characterized the payment to Dean as a loan, testifying that he gave her the money because she was undergoing her Senate confirmation hearings and was "financially ... in some stress." Bearing out this description of the payment, Kitchin noted "Loan" on the check he gave Dean. Moreover, the government's evidence showed that Dean needed a loan at this time. When she deposited Kitchin's check on May 6, 1987, her account was overdrawn $260.53, her bank had charged her account for insufficient funds four times since April 28, 1987, her April mortgage payment was late, and she owed $4,882.87 on a credit card.

Kitchin's business colleague, Jack Jennings, testified that Kitchin told him Dean "had purchased some furniture and that she needed around $4,000 ... and that he was thinking about giving her the money." When Jennings asked whether Dean was going to pay the money back, Kitchin responded, "If she pays me back, she pays me back. If she doesn't, she doesn't." Later, Kitchin told Jennings he had given Dean the money. Kitchin informed Jennings that, after the bank returned the cashed check to him, he had "either destroyed the check or hidden it." Kitchin's testimony about whether Dean had paid him back any portion of the $4,000 was inconsistent. On direct examination, he said that she had not paid him anything, but on earlier occasions he said he thought she had paid him back part of the money.

The evidence is sufficient to sustain Dean's convictions on both Counts Three and Four. Dean certainly accepted the

money, and the jury could reasonably have concluded from the evidence at trial that she had never paid it back. Moreover, in light of the evidence that Kitchin and Kitchin's clients had benefitted from Dean's efforts at the Department, the jury was entitled to find that Dean had accepted the money in exchange for her performance of "official acts."[9]

B. Perjury and 18 U.S.C. § 1001 Violations

The other eight counts in the indictment arise from Dean's testimony on August 6, 1987, before the Senate Committee on Banking, Housing and Urban Affairs regarding her nomination for Assistant Secretary for Community Planning and Development. Had the Senate confirmed Dean to this position, she would have advised the Department Secretary on community and economic development programs. Counts Five, Seven, Nine, and Eleven allege that Dean committed perjury in violation of 18

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[9] According to the indictment, the object of the conspiracies alleged in Counts One, Two and Three was not only to defraud the United States, but also to violate 18 U.S.C. § 1001, which prohibits the concealment of material facts by "any trick, scheme, or device" in matters "within the jurisdiction of any department or agency of the United States." In arguing that the evidence was insufficient to support her convictions on these counts, Dean draws no distinction between these two objects. The government alludes to the § 1001 aspect of the conspiracies only in a footnote. Brief for United States at 17 n.5. While § 1001 may encompass false statements in "myriad governmental activities," *United States* v. *Rodgers*, 466 U.S. 475, 480, 104 S.Ct. 1942, 1946, 80 L.Ed.2d 492 (1984), there is no need to decide whether the evidence relating to Counts One, Two and Three also supports a finding that Dean conspired to violate § 1001. Even if it did not, Dean's convictions on these counts would stand. A general jury verdict on a multiple object conspiracy is valid so long as the prosecution submits sufficient proof of one object of that conspiracy. *Griffin* v. *United States*, 502 U.S. 46, 57, 112 S.Ct. 466, 473, 116 L.Ed.2d 371 (1991).

U.S.C. § 1621 for statements she made before the Senate committee. For each of the allegedly perjurious statements, the government also charged Dean — in Counts Six, Eight, Ten, and Twelve — with violations of 18 U.S.C. § 1001. In the words of the indictment, Dean violated § 1001 because she knowingly made these statements pursuant to "a trick, scheme and device to falsify, conceal and cover up material facts."

We reverse Dean's convictions on Counts Six, Eight, Ten, and Twelve. Section 1001 criminalizes the concealment of material facts only in matters "within the jurisdiction of any department or agency of the United States." 18 U.S.C. § 1001. After oral argument in this case, the Supreme Court reversed *United States* v. *Bramblett*, 348 U.S. 503, 509, 75 S.Ct. 504, 507, 99 L.Ed. 594 (1955), which had interpreted "department," as used in § 1001, to include the executive, judicial and legislative branches of the federal government. *Hubbard* v. *United States*, --- U.S. ----, ----, 115 S.Ct. 1754, 1765, 131 L.Ed.2d 779 (1995). In Hubbard, the Court narrowed the reach of § 1001 to matters within the executive branch, a coverage consistent with both the common usage of "department" and that term's definition in Title 18. *Id.* at ---- - ----, ----, 115 S.Ct. at 1756-1758, 1765. Dean was convicted on Counts Six, Eight, Ten, and Twelve for statements she made before Congress.[10] Her convictions on these counts therefore cannot stand.

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[10] By contrast, the government supported Counts One, Two and Three, in which it claimed that Dean had conspired to violate 18 U.S.C. § 1001, with evidence of actions Dean took as a Department official. This conduct was plainly within the jurisdiction of an executive agency — the Department of Housing and Urban Development. See supra p. 658 n.9.

1. Count Five

Count Five is based on the following exchange between Dean and Senator William Proxmire, Chairman of the Committee. Senator Proxmire asked Dean:

> We received a number of complaints that, in 1987, this year, there has been no notification of funds availability to regional offices. This is troublesome because this notification is important to promote applications so that all worthy candidates have a chance to apply and that HUD has the chance and the time to rank the applicants. Instead, it is suggested that informal solicitations and unawarded applications from the past are guarded by you, and that you personally go through the selections, excluding review by the appropriate staff experts. Furthermore, it is suggested that developers have personally come to you asking for awards. Now, as you know, the proper procedure is for the HUD Washington office to deal with housing authorities and for them to deal with developers. In some cases, the housing authorities have subsequently alerted HUD that these funds aren't even needed. How do you respond to that?

Dean answered:

> Well, to my knowledge, we do not put out a notice of funding availability on the mod rehab program. I have never seen us do one since I've been at HUD. The program, instead, works that the field offices receive applications from public housing authorities. They are rated and ranked, sent to the

> regional administrator, who forward [sic] them to the Assistant Secretary for Housing, Federal Housing Commissioner. The Assistant Secretary for Housing puts together the applications and, with the Deputy Assistant Secretary for Multifamily Housing, comes to some conclusion as to where they believe these funds could best be used. Once again, they bring it to a panel of people, which is the Under Secretary, the executive assistant to the Secretary and the Federal Housing Commissioner. *That panel goes solely on information provided by the Assistant Secretary for Housing.* He gives us the information and the three of us make recommendations to the Secretary, who is the person who approves those units.

The italicized sentence in Dean's response is the foundation for the Count Five perjury charge.

A witness testifying under oath violates 18 U.S.C. § 1621, which is set out in the margin,[11] if she willfully gives false testimony on a material matter. *United States* v. *Dunnigan*, --- U.S. ----, ----, 113 S.Ct. 1111, 1116, 122 L.Ed.2d 445 (1993). Testimony resulting from confusion, mistake or faulty memory cannot support a perjury conviction. *Id.* Dean claims that she did not commit perjury because she answered "the question that was essentially

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[11] 18 U.S.C. § 1621 provides: Whoever — (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify ... truly ... and contrary to such oath states or subscribes any material matter which he does not believe to be true ... is guilty of perjury and shall ... be fined under this title or imprisoned not more than five years, or both....

asked — whether she made [moderate rehabilitation funding] decisions alone." Brief for Appellant at 37.

We disagree with Dean's characterization of Senator Proxmire's question. The thrust of the Senator's inquiry was whether Dean played a part in any moderate rehabilitation funding decision in which Departmental regulations were not followed. Specifically, he wanted to know whether Dean had violated Department regulations by personally ensuring that moderate rehabilitation funds went to specific developers, despite regulations requiring local public housing authorities to allocate awards to developers. In essence, Dean denied Senator Proxmire's intimations. She asserted that the Department, acting through a three-person panel of which she was a member,[12] allocated moderate rehabilitation funds to public housing authorities based "solely" on information supplied by the Assistant Secretary for Housing/Federal Housing Commissioner.

But at trial the government presented evidence belying Dean's portrayal of the program. A Department official's description of a panel meeting is illustrative. J. Michael Dorsey, Department General Counsel from 1987 to 1989, attended a panel meeting in early 1987. At the meeting, Demery, the Federal Housing Commissioner at the time, "came with a list ... of cities with a number of units and we went through the list." According to Dorsey, Dean commented on some of the applications, identifying "people who had called her about specific projects." Demery testified that he and Dean participated in two panel meetings

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[12] This panel first met in March 1987. It comprised three members: Dean, Thomas Demery, who was the Assistant Secretary for Housing/Federal Housing Commissioner from October 1986 to 1989, and either the Department's Under Secretary or General Counsel. Its purpose was to review public housing authorities' applications for moderate rehabilitation funds and to decide how to allocate those funds.

in 1987. Before the meetings, he and Dean discussed public housing authorities that had "come to [their] attention." The two would then "come to a consensus" regarding funding. Factors influencing their "deliberative process" included "any contacts on behalf of the [authority's] requests." From this evidence, the jury was entitled to find that the panel did not base its decisions "solely on information provided by the Assistant Secretary for Housing." We therefore sustain the jury's conviction of Dean on Count Five.

2. Count Seven

Count Seven charged Dean with perjury, in violation of 18 U.S.C. § 1621. This charge stemmed from the rest of Dean's reply to Senator Proxmire's question. She continued:

> *I have never given or approved or pushed or coerced anyone to help any developer.* Those funds go directly to the public housing authority. As a matter of fact, I have regular meetings with public housing authorities where I tell them that they should be dealing directly with developers. A lot of times, public housing authorities send developers to HUD. And they meet with people all over the building. *It's a tremendous waste of time,* and I let them know that; because those funds go to the public housing authorities.

The two italicized sentences are the bases for the Count Seven perjury charge.

We sustain the jury's verdict finding Dean guilty on Count Seven. The government established that Dean participated in three conspiracies in which she used her influence at the Department to make sure moderate rehabilitation funds went to favored projects and developers. Given this evidence, the jury could reasonably have concluded that Dean lied when she said she had never

"help[ed] any developer" and that developers who contacted her wasted their time because public housing authorities decided which projects to fund.

3. Count Nine

Count Nine arises from the following colloquy between Dean and Senator Proxmire:

> Senator Proxmire: Now, Ms. Dean, can you tell us about your involvement in the deployment of section 8? That's the moderate rehabilitation funds for a project known as Baltimore Uplift One?
> According to the Washington Post in a story dated October 1984, there was an abuse of some $17 million; according to HUD staffers in Baltimore, these funds came from the Secretary's discretionary fund.
> And since you worked closely to the Secretary at the time, what can you tell us about that problem?
> Dean: Senator, could you give me the date again?
> Senator Proxmire: Yes. The date is October 1984.
> Dean: I was executive assistant to the Secretary at that time. I've never heard of Baltimore Uplift One. It was a moderate rehabilitation project?
> Senator Proxmire: What's that?
> Dean: You said it was in the mod rehab program?
> Senator Proxmire: Mod, section 8, moderate rehabilitation. That's right.
> Dean: There are two explanations why I would not know it. I might not know the name or those funding decisions were made prior to my appointment in June, and the funds were not released from the

> Department until October. But I've never heard of Baltimore Uplift One.

The two italicized sentences, in which Dean denies having heard of the Baltimore Uplift One project, are the foundation of the Count Nine perjury charge.

To support her argument that she responded truthfully to Senator Proxmire's question about the Baltimore Uplift One project, Dean argues that evidence supports both of the explanations she offered at the Senate hearing for her unfamiliarity with the project. First, she points to DeBartolomeis' testimony that the Department made the final decision to allocate moderate rehabilitation funds to the Baltimore Uplift project in May 1984, before Dean's June 24, 1984, appointment to the position of Executive Assistant to Secretary Pierce. Second, Dean relies on testimony from James Baugh, an employee in the Public and Indian Housing section of the Department. Baugh participated in the administration of the Moderate Rehabilitation Program until late 1983 or early 1984. Although Baugh was familiar with "the concept of uplift" programs, he had never heard of Baltimore Uplift One. Apparently, Dean reasons that since Baugh had never heard of the project, one could conclude that she had never heard of it either.

Dean's evidence, however, does not overcome the government's proof that she had heard of the project. DeBartolomeis testified that he was familiar with the Baltimore Uplift One project, a "scattered type multi-family project that had trouble getting finished." He knew Dean was involved in the project because she "talked to [him] about it." Janice Golec, special assistant to Secretary Pierce from 1983 to 1985, testified that Dean asked her to attend a meeting regarding the project and that Dean gave her "a brief overview of what the project was and what the issues were." From this evidence, a jury could rationally have concluded that Dean did not tell the truth at the Senate hearing when she said she had never heard of Baltimore

Uplift One. We therefore do not disturb the jury's conviction of Dean on Count Nine.

4. Count Eleven

The final perjury count on which the jury convicted Dean is based on the last statement she made in response to Senator Proxmire's inquiry about the Baltimore Uplift One project. After saying "But I've never heard of Baltimore Uplift One," Dean continued:

> As a matter of fact, no moderate rehabilitation units that I know of, unless they were sent directly by the Secretary, have ever gone to my home State of Maryland, simply for that reason — that I sat on the panel.

The jury found that in making this statement, Dean committed perjury.

We reverse Dean's conviction on Count Eleven. The government claims Dean's statement represented her denial of having ever participated in a moderate rehabilitation funding decision for a Maryland project. Brief for United States at 39-40. But that is not literally what she said. While Dean had participated in decisions for Maryland projects, her testimony indicated that those projects did not receive special consideration "simply" because Dean sat on the panel. Dean's statement could have been true, and, in any event, the government never proved at trial that she showed particular favoritism to Maryland projects. Although it may be, as Mark Twain said, that "[o]ften, the surest way to convey misinformation is to tell the strict truth," a statement that is literally true cannot support a perjury conviction. *Bronston* v. *United States*, 409 U.S. 352, 360, 93 S.Ct. 595, 600, 34 L.Ed.2d 568 (1973).

III

In addition to challenging her conviction for insufficient evidence, Dean contends that the trial court committed reversible error in several of its rulings. We address first her complaint that the trial court improperly quashed two defense subpoenas. Next, we consider her claim that the prosecutor's conduct at trial requires reversal of her conviction.

A. The Quashed Subpoenas

Dean argues that the trial court committed reversible error in quashing subpoenas she served on Senator Proxmire and Bart Naylor, a Senate committee investigator. The Sixth Amendment gives a defendant in a criminal proceeding the right to "have compulsory process for obtaining witnesses in his favor." U.S. CONST. amend. VI. This right is not violated by "the mere absence of testimony." *United States* v. *Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S.Ct. 3440, 3446, 73 L.Ed.2d 1193 (1982). Rather, the defendant must make "some plausible showing of how [the witnesses'] testimony would have been both material and favorable to his defense." *Id.*; see *Washington* v. *Texas*, 388 U.S. 14, 16, 87 S.Ct. 1920, 1921, 18 L.Ed.2d 1019 (1967). A witness' testimony is material if its absence actually prejudiced the defendant's ability to mount a defense. *United States* v. *North*, 910 F.2d 843, 889 (D.C. Cir. 1990), *cert. denied*, 500 U.S. 941, 111 S.Ct. 2235, 114 L.Ed.2d 477 (1991).

Dean proposes two ways in which Senator Proxmire's and Bart Naylor's testimony would have assisted her defense, neither of which is persuasive. Their testimony, as she sees it, would have disproved the charge that she intentionally misled the Senate by testifying that the panel allocating funds to public housing authorities relied "solely on information provided by the Assistant Secretary for Housing," the statement at issue in Count Five. Brief for Appellant at 42. Since her job at the Department required her to "make sure

that Congressional input was properly considered" in moderate rehabilitation funding decisions, she could not have intended "to conceal the fact that she provided incidental information, such as Congressional input, to the panel." *Id.* By showing Senator Proxmire's familiarity with her liaison function, Dean claims she could have established that she did not intend to speak falsely when she said the panel relied only on information provided by the Assistant Secretary of Housing. *Id.*

Dean's theory appears to be that if she had testified, "That panel goes solely on information provided by the Assistant Secretary for Housing, *as well as on Congressional information I provide,*" she would not have committed perjury. At best, Senator Proxmire might have added this twist to the statement she made at the Senate hearings. But even if this is what she meant, the jury could still have found from the evidence that she intentionally testified falsely. It is up to the jury "to determine that the question *as the defendant understood* it was falsely answered in order to convict." *United States* v. *Chapin*, 515 F.2d 1274, 1280 (D.C. Cir.), *cert. denied*, 423 U.S. 1015, 96 S.Ct. 449, 46 L.Ed.2d 387 (1975). Senator Proxmire plainly wanted to find out whether Dean had bypassed federal regulations and had dealt directly with developers in administering the Moderate Rehabilitation Program. Dean's response to the Senator can be fairly read as a denial of such dealings. The government presented evidence from which the jury could conclude that this denial was false. Senator Proxmire's and Naylor's testimony therefore would have not altered the essential untruthfulness of her statement. It follows that Dean was not actually prejudiced by the trial court's quashing of the subpoenas.

Dean's second argument is that the Senator's and Naylor's testimony was material to her defense because it could have established that the Senator's question lacked a proper legislative purpose. Brief for Appellant at 43-44.

Whatever the force of her argument,[13] she did not make this claim to the trial court, her counsel's vague references to Senator Proxmire's "motive ... bias and ... reason to do what he [did]" and to a "political circus" notwithstanding. Accordingly, we review the trial court's failure sua sponte to consider this argument for plain error — whether it was both "very obvious and gravely prejudicial." *United States* v. *Derr*, 990 F.2d 1330, 1333 n.2 (D.C. Cir. 1993). Because the theory of the relevance of Senator Proxmire's and Naylor's testimony Dean now proposes is far from obvious, the trial court did not plainly err in not addressing it.[14]

B. Alleged Prosecutorial Misconduct

Dean next claims that the trial court erred in not granting her motion for a new trial because of the prosecutor's conduct before and during trial. She argues that the government violated the obligations to provide her with exculpatory information, see *Brady* v. *Maryland*, 373 U.S.

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[13] Dean relies on *United States* v. *Cross*, 170 F.Supp. 303, 310 (D.D.C. 1959), in which the court held that a "perjury indictment may not be found on false testimony in response to questions which are not asked for the purpose of eliciting facts material to the [legislature's] investigation, that is, facts sought in aid of the legislative purpose." Dean does not explain how Senator Proxmire, in conducting the confirmation hearing pursuant to Article 2, § 2 of the Constitution, did not act to further a proper legislative purpose.

[14] Dean also argues that the trial court erred in quashing, on Speech or Debate Clause grounds, a subpoena duces tecum issued to the Senate Committee. Among the documents Dean sought were Committee notes on her testimony that were forwarded to the General Accounting Office and a report from the Comptroller General indicating there were no inconsistencies between her statement and the facts. As with Senator Proxmire's and Naylor's testimony, Dean does not demonstrate how her lack of access to these items actually prejudiced her defense.

83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and that the prosecutor's closing argument was impermissible.

1. Brady Issues

Brady v. *Maryland*, 373 U.S. at 87, 83 S.Ct. at 1197, requires the prosecution to disclose to an accused exculpatory information that is both favorable and material to guilt or punishment. This duty extends to evidence drawing into doubt the credibility of a witness when the witness' reliability may be determinative of guilt or innocence. *Giglio* v. *United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972). Evidence is material if there is a reasonable probability that, had the evidence been disclosed, the outcome of the proceeding would have differed. *United States* v. *Bagley*, 473 U.S. 667, 682, 105 S.Ct. 3375, 3383, 87 L.Ed.2d 481 (1985). A reasonable probability is a "probability sufficient to undermine confidence in the outcome." *Id.* When the government delays disclosing exculpatory evidence, the defendant must show a reasonable probability that an earlier disclosure would have changed the trial's result. *United States* v. *Tarantino*, 846 F.2d 1384, 1417 (D.C. Cir.), *cert. denied*, 488 U.S. 840, 867, 109 S.Ct. 108, 174, 102 L.Ed.2d 83, 143 (1988). If a defendant receives exculpatory evidence "in time to make effective use of it," a new trial is, in most cases, not warranted. *United States* v. *Paxson*, 861 F.2d 730, 737 (D.C. Cir. 1988).

Dean points to a number of instances in which the government was either delinquent in complying with its Brady obligations or did not comply with Brady at all. First, despite a June 30, 1992, order from the court to produce exculpatory evidence, the government did not provide her with three potentially exculpatory statements from interviews until August 20, 1993, less than two weeks before jury selection. Brief for Appellant at 45. At this time, the government disclosed: (1) Shelby had told the prosecution that, as far as he knew, Dean did not know of Mitchell's involvement in the Park Towers Apartments project; (2)

Kitchin had denied that Dean had provided any personal favors for him relating to Department business; and (3) the manager of the Baltimore Uplift One project had said that Dean was not involved in that project. *Id.* at 46 n.27. Second, the government did not identify as exculpatory a statement from an interview with Shelby indicating that Shelby had tried to keep Dean from finding out about Mitchell's involvement with Park Towers. On the first day of trial, Dean located this remark in a witness statement provided by the government pursuant to the Jencks Act, 18 U.S.C. § 3500. Brief for Appellant at 47 n.30. Third, the government failed to classify as exculpatory certain telephone messages to Mitchell. Dean claims that these messages showed Lance Wilson, Dean's predecessor as Executive Assistant, was Mitchell's contact on the Arama project, not Dean. *Id.* at 47 n.31. Dean obtained this information through discovery.

Dean also complains that the government presented "false evidence" at trial because it introduced a number of Sankin's credit card receipts that indicated he had entertained and given gifts to Dean. On cross-examination, Sankin stated that he had told counsel for the government that several of the charge slips introduced into evidence "were definitively not related to Deborah Dean." At a bench conference, government counsel explained that on the previous day Sankin told him that "he had no specific recollection" regarding any of the receipts, even the ones bearing Dean's name. Observing that the government should have alerted the court and defense counsel to Sankin's statement, the judge gave defense counsel three choices. The court would either strike the documents, give the jury cautionary instructions, or defense counsel could simply cross-examine Sankin and discredit his testimony. Dean's counsel opted to continue cross-examination.

We deplore the government's tardiness in producing the statements from Shelby, Kitchin, and the manager of the

Baltimore Uplift One project and its failure to identify the Shelby statement and the telephone messages as exculpatory. We agree with the district court that the government should have notified the court and Dean's counsel of Sankin's statement regarding the charge card receipts. Nevertheless, because Dean has not established that the government's dereliction materially prejudiced her defense, she is not entitled to a reversal of her conviction on any count. Dean effectively used, or had an opportunity to use, all the late-disclosed or unsegregated exculpatory evidence at trial. On cross-examination, Shelby repeated the statements he made to the government in interviews.[15] Shelby said that when he entered into the agreement with Mitchell he was not aware of Mitchell's relationship with Dean and that as far as he knew, Dean never knew Mitchell received a consulting fee from any of Shelby's projects. He admitted that he intentionally did not tell Dean that he paid Mitchell any money.

Dean also used Kitchin's statement effectively. On cross-examination, Kitchin testified that no one at the Department — including Dean — did anything for him "that wasn't right ... [or that was] corrupt." Further, the government's late production of the exculpatory statement of the manager of the Baltimore Uplift One project did not materially prejudice Dean's defense. Dean had the statement in time to make use of it. In fact, the manager's name was on Dean's list of potential witnesses on September 7, 1993, nearly one month before she began presenting her case. That she chose not to call the manager to testify undermines her

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[15] Both of Shelby's statements relate to Dean's knowledge of Mitchell's involvement in the Park Towers Apartments project. We have already concluded that the evidence relating to this housing development is not sufficient to constitute an overt act in furtherance of the conspiracy charged in Count One. See supra p. 649.

claim that this testimony would have affected the outcome of the trial. Dean also effectively used the phone messages that the government did not segregate as exculpatory. The government provided the messages to Dean more than a year before trial, she placed the documents into evidence at trial, and argued their significance to the jury. Finally, we think that whatever prejudice Dean suffered from the government's use of the Sankin receipts is of her own making. The trial court gave Dean's counsel the choice of striking this evidence. Instead, he chose to leave it before the jury and to attempt to undermine Sankin's credibility by using the receipts on cross-examination. In short, Dean has not shown the kind of prejudice necessary to warrant the granting of a new trial on the basis of Brady violations.

2. Closing Argument

In his closing and rebuttal arguments, the prosecutor parsed Dean's six days of testimony. At least thirty-one times in his arguments, he questioned Dean's veracity and described her testimony as lies. Dean points to the following examples:

> What about the defendant's case? What has the defendant shown to you in this trial? Her entire case rests on her credibility, her believability. The first thing you must ask yourselves, ladies and gentlemen, is, is the defendant a credible witness? Did she tell you the truth?
>
> * * * * * *
>
> She lied to you ... She lied in this Court before you. Having done that, does anything else make any sense? Can you see her as being a credible witness?
>
> * * * * * *

> Based on her lies you should throw out her entire testimony. Her six days' worth of testimony is worth nothing. You can throw it out the window into a garbage pail for what it's worth, for having lied to you. But why do we keep going? Why do we keep asking questions? Because it was filtered with lies. Her entire testimony just kept changing.
>
> * * * * * *
>
> In order to believe her you have to believe that John Mitchell is lying.... Jack Brennan lied to her. Rick Shelby lied to her. Maurice Barksdale is mistaken. Janet Hale is mistaken. Andrew Sankin, lied. Lance Wilson, lied. Linda Murphy, lied. Silvio DeBartolomeis, lied. Philip Winn, mistaken. Susan Zagame, mistaken. Thomas Demery lied. Sherrill Nettles-Hawkins, mistaken. Everybody else lied or was mistaken, but not her. But she's the only one we know who definitively did lie. Her story is built on a rotten foundation. It is rotten to the core. It doesn't square with common sense. It is lies piled upon lies. It crumbles to pieces the minute you look at it.

Dean contends that these and similar comments were impermissible and require reversal of her convictions.

"Lies" and "lying" are hard words. But this was closing argument, not a polite social conversation. Dean was charged with perjury. The prosecutor had every right to argue that she had not told the truth. He could have told the jury that the evidence proved Dean had been "untruthful," or that she "fabricated her testimony," or "prevaricated," or

that she "bore false witness," "made up her story," "is not to be believed," "violated her oath." These and many other words and phrases would have conveyed the same idea as "lie" and "lying," perhaps not as forcefully, or, depending on the prosecutor's rhetorical skill, perhaps more forcefully. Still, is there any reason in law why the words "lie" and "lying" should be banned from the vocabulary of summation, particularly in cases that turn on the defendant's credibility? We conceive of none, so long as the prosecutor sticks to the evidence and refrains from giving his personal opinion. Compare *Harris* v. *United States*, 402 F.2d 656 (D.C. Cir. 1968); *Olenin* v. *Curtin & Johnson, Inc.*, 424 F.2d 769 (D.C. Cir. 1968) *(per curiam)*. Other courts have reached the same conclusion. See *United States* v. *Jacoby*, 955 F.2d 1527, 1540-41 (11th Cir. 1992), *cert. denied*, --- U.S. ----, 113 S.Ct. 1282, 122 L.Ed.2d 676 (1993); *Bradford* v. *Whitley*, 953 F.2d 1008, 1013 (5th Cir. 1991), *cert. denied*, --- U.S. ----, 113 S.Ct. 91, 121 L.Ed.2d 53 (1992); *United States* v. *Molina*, 934 F.2d 1440, 1445 (9th Cir. 1991); *United States* v. *Peterson*, 808 F.2d 969, 977 (2d Cir. 1987); *United States* v. *Chaimson*, 760 F.2d 798, 811 (7th Cir. 1985); *United States* v. *Birges*, 723 F.2d 666, 671-72 (9th Cir.), *cert. denied*, 469 U.S. 863, 105 S.Ct. 200, 83 L.Ed.2d 131 (1984). Of course, a prosecutor can overdo it. Whether the prosecutor has struck a foul blow instead of just a hard one is largely for the district court to decide. Much depends on context and tone. In this case, to the extent the prosecutor's remarks spilled over into expressions of personal belief, or may have been so perceived by the jurors — for example, "she's the only one we know who definitively did lie" — the district court cured the problem. The court instructed the jury not to consider the opinion of counsel about who lied because it was up to the jury alone to decide who was telling the truth.

IV

The district court sentenced Dean to concurrent terms of 21 months' imprisonment on all counts. Dean challenges her sentence on the grounds that the district court erred in applying the Sentencing Guidelines to Counts One and Two, and that the court abused its discretion in adjusting her sentence on these counts upward 6 levels. (The Guidelines did not apply to any of the other counts.)[16]

We agree with Dean that the district court should not have sentenced her on Count One under the Guidelines, and we therefore vacate her sentence on this count. As to Count Two, we agree with the district court that the Guidelines applied. Nevertheless, we vacate the sentence on that count so that the district court may reconsider its upward adjustment of Dean's offense level in view of our conclusions regarding the sufficiency of the evidence. Since it appears that the district court arrived at the 21-month term imposed with respect to the other counts on the basis of the Guideline sentence for Counts One and Two, we vacate the sentences on those other counts and remand for resentencing (except of course in regard to Dean's convictions on Counts Six, Eight, Ten, Eleven, and Twelve, which we reverse).

The district court sentenced Dean under the Guidelines on Counts One and Two because it found that the conspiracies charged in these counts continued after November 1, 1987. A conviction for a conspiracy that began before November 1, 1987, the effective date of the Guidelines, but continued after that date is subject to the

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[16] The district court sentenced Dean on Counts Three through Twelve under the sentencing laws in effect before the effective date of the Guidelines. For each of these counts, the court ordered Dean to serve twenty-one months' confinement, to run concurrently with each other and with the sentences imposed under Counts One and Two.

Guidelines. *United States* v. *Milton*, 8 F.3d 39, 48 (D.C. Cir. 1993), *cert. denied*, --- U.S. ----, 115 S.Ct. 299, 130 L.Ed.2d 212 (1994); *United States* v. *Dale*, 991 F.2d 819, 853 (D.C. Cir.), *cert. denied*, --- U.S. ----, 114 S.Ct. 286, 126 L.Ed.2d 236 (1993). As to Count One, the district court identified three acts of Dean's alleged co-conspirators that extended the conspiracy beyond November 1, 1987: a May 11, 1990, letter from Louie Nunn to Aristides Martinez requesting that Martinez release from escrow Nunn's fee for services he performed for the South Florida I development; Martinez' authorizing the escrow agent to pay Nunn; and Nunn's acceptance of that payment. We have already held that the evidence relating to the South Florida I project could not support a jury finding that Dean and her collaborators engaged in overt acts to further the conspiracy. See supra pp. 650-51. Even the less demanding preponderance-of-the-evidence standard, used when factual issues determine whether the Guidelines apply, Milton, 8 F.3d at 48, has not been satisfied, for the reasons we have already given. Because the evidence is not sufficient to show that the conspiracy continued beyond November 1, 1987, the district court clearly erred in applying the Guidelines to Dean's sentence under Count One and we therefore vacate it. See *United States* v. *Dale*, 991 F.2d 819, 854 (D.C.Cir.), *cert. denied*, --- U.S. ----, 114 S.Ct. 286, 126 L.Ed.2d 236 (1993).

The second count is another matter. The district court found that the conspiracy charged in Count Two continued after November 1, 1987, because Sankin received payments for his consulting services after this date. At trial, the government showed that Sankin received checks for $25,000 from the developer of the Puerto Rican Alameda Towers project on December 1, 1987, and on March 19, 1990. We agree that a preponderance of the evidence showed that Sankin's receipt of these payments was within the scope of the conspiracy between Dean and Sankin and was a

reasonably foreseeable consequence of their unlawful actions. Cf. Milton, 8 F.3d at 48. Accordingly, the district court correctly used the Guidelines in sentencing Dean on Count Two.

Nevertheless, we think it appropriate to permit the district court to reconsider its upward adjustment of Dean's offense level in view of our conclusions about the sufficiency of the evidence on this count.[17] We recognize that a sentencing court may impose a sentence outside the range established by the applicable guideline if the court finds an aggravating circumstance not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines. UNITED STATES SENTENCING

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[17] Applying the 1990 version of the Guidelines, the district court determined Dean's total offense level was 16. It assigned Dean a base offense level of 6 under § 2F1.1, the guideline for fraud and deceit. It then increased the base offense level to 10, adding 2 levels under § 2F1.1(b)(2) because the offense involved more than minimal planning and another 2 levels under § 3B1.3 because Dean had abused a position of public trust. Departing from the guidelines, the court then added 6 levels to Dean's offense level, giving her a total offense level of 16.

The district court arrived at the 6-level upward departure by looking to § 2C1.2(b)(2)(B), the guideline for gratuity offenses, which provides for an 8-level increase for officials holding a high level decision-making position. Taking into account the 2-level increase for Dean's abuse of position of public trust, the court only adjusted Dean's sentence upward by 6 levels. The court found the increase necessary because Dean's conduct "along with others at HUD caused a major scandal that certainly eroded the public confidence in HUD, if not in the federal government." Dean's criminal history category was I. The corresponding sentencing range under the 1990 Guidelines was 21-27 months' imprisonment. UNITED STATES SENTENCING COMMISSION, GUIDELINES MANUAL § 5A (Nov. 1990).

COMMISSION, GUIDELINES MANUAL § 5K2.0, p.s. (Nov. 1990). Nevertheless, such a departure is "warranted only if the factor is present to a degree substantially in excess of that which is ordinarily involved in the offense." *Id.* In light of our ruling that much of the government's evidence of overt acts in furtherance of the conspiracy alleged in Count Two was insufficient, the district court should reassess whether circumstances still warrant its upward departure.[18]

We also vacate Dean's sentences on Counts Three, Four, Five, Seven, and Nine. The district court apparently wished to sentence Dean to concurrent terms of equal length on all counts. Because Dean's sentence on Count Two may change after the district court reconsiders its decision to adjust Dean's sentence upward, we think it appropriate to permit the court to resentence Dean on these counts as well. See *United States* v. *Wright*, 12 F.3d 70, 75 (6th Cir. 1993).

* * *

In conclusion, we reverse Dean's convictions on Counts Six, Eight, Ten, Eleven, and Twelve. We affirm her convictions on Counts One, Two, Three, Four, Five, Seven, and Nine, but vacate her sentences on those counts and remand to the district court for resentencing.

So ordered.

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[18] Although the Guidelines do not apply to Count One, in resentencing Dean on this count, the district court should similarly bear in mind that much of the government's evidence was insufficient to show that Dean committed overt acts in furtherance of the conspiracy alleged in the indictment.

Supreme Court, U.S.
FILED
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No. 95-942

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

DEBORAH GORE DEAN,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent,

On Petition For a Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

PETITIONER'S REPLY BRIEF

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February 26, 1995

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STATUTES

18 U.S.C. § 1001 2

ARGUMENT

Petitioner, Deborah Gore Dean, respectfully submits this reply brief in further support of her petition for writ of certiorari and in reply to the brief in opposition.

I. INDEPENDENT COUNSEL'S ATTEMPT TO SALVAGE COUNTS I, II, AND III FROM REVERSAL PURSUANT TO *YATES* IS WITHOUT MERIT.

The issue before this Court is whether multiple-object conspiracy counts, I, II and III must be reversed because one of the objects in each count is not a crime, a general verdict was returned and it is impossible to tell which object the jury selected. *Yates v. United States*, 354 U.S. 298 (1957).

Respondent argues that *Yates* is inapposite because the § 1001 object *was* a crime (that remained unaffected by *Hubbard*) because it encompassed "actions Dean took as a Department official" which was conduct within the jurisdiction of an executive agency -- the Department of Housing and Urban Development. ("HUD") Op. Cert. at 5. As set forth below, this argument ignores the plain language of the Indictment and the jury instructions, and is unsupported.

A. The Plain Language of the Indictment Establishes That The § 1001 Object Relates to Matters Within The Jurisdiction of the Senate Banking Committee.

The "scope" of the § 1001 object is established by the plain language of the Indictment.[1] Because the § 1001 object does not specify "the jurisdiction of a department and agency

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[1] To hold otherwise suggests that courts have the discretion to enlarge the scope of an indictment to, in effect, create additional crimes.

of the United States" to which it relates,[2] this Court must look to the specifically delineated "overt acts."

There is only one identical overt act in each conspiracy count which could conceivably support the § 1001 object and that act identifies only the Senate Banking Committee. Pet. at 8. Moreover, that overt act mirrors the allegations of the substantive § 1001 counts (Counts VI, VIII, X and XII) on which the jury convicted. Pet. at 8-11. There are *no* overt acts that support Respondent's contention that the § 1001 object was "within the jurisdiction of HUD" and he does not cite to one.

B. The Jury Was Instructed That The § 1001 Object Relates to Matters Within The Jurisdiction of the Senate Banking Committee.

When the district court instructed the jury on the elements of conspiracy, it instructed them separately on the various objects in each count. When the court reached the § 1001 object, however, it stated:

> Later in these instructions, I will define the elements of the offense of falsifying and concealing material

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[2] Counts I, II, and III each allege a violation of 18 U.S.C. § 1001 as one of its objects by tracking the language of the statute: ". . . defendant DEBORAH GORE DEAN, in matters *within the jurisdiction of a department and agency of the United States*, would knowingly and willfully falsify, conceal, and cover up . . . in violation of Title 18, United States Code, Section 1001." Indictment, Count I, A-28-29, ¶1(C); Count II, A-42, ¶1(C). *See also* Count III, A-56, ¶1(C) (ii).

Contrary to Respondent (Op. Cert. at 4, n.2), the *Yates* analysis applies to Count III. The affirmance of the substantive § 201 count may satisfy a *Griffin v. United States*, 502 U.S. 46 (1991) analysis but it is irrelevant to a *Yates* analysis.

> facts within the jurisdiction of a department or agency of the United States which, if proved beyond a reasonable doubt, constitutes a separate substantive crime . . . . I instruct you now that the elements of these offenses have the same meaning in this count (the conspiracy counts) as they do in the later counts.

A-181 (emphasis added).[3] When the court did later discuss the concealment counts it stated:

> And as to the final element, the fourth element, you are instructed the material facts charged in Counts 6, 8, 10, 12 are matters within the jurisdiction of the Senate Banking Committee and are thus matters within the jurisdiction of a department or agency within the United States.

A-185 (emphasis added), *see also* A-182-84. Moreover, the jury was given a copy of the Indictment and the instructions so that it could compare the objects alleged in the conspiracy counts and the instructions on those counts to the instructions on Counts VI, VIII, X and XII. A-186. The government did not object to the instructions or to the fact that they were provided to the jury.

C. The Prosecutor Confirmed In Closing Argument That All Concealments Related to the Senate Banking Committee.

The prosecutor argued in closing argument that the only concealment alleged was contained in Counts V through XII (the perjury and concealment substantive counts), thus acknowledging that the concealment alleged in the conspiracy

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[3] References to the Appendix to the Petition are identified as A-1 through A-160. References to the Appendix to this booklet begin at A-161. References to Respondent's Appendix are "RA-__."

counts (the § 1001 object) was the same as that alleged in the substantive counts. *See* A-81-82, 112-13, 142-43.

D. Independent Counsel's Assertion That The § 1001 Object Was Within HUD's Jurisdiction Is Without Merit.

Despite the foregoing, Respondent points to out-of-context excerpts from the court's opinion and the Indictment in an attempt to suggest that it was concealments made to HUD (not to the Senate) that are the basis of the § 1001 object. These arguments are without merit.

First, Respondent relies on footnotes 9 and 10 to suggest that the court found that the § 1001 object relates to concealments to HUD. These footnotes were in the context of a *Griffin*, as opposed to a *Yates*, analysis as Petitioner had appealed on the basis of insufficient evidence as to all twelve counts. A-2. Petitioner did not argue for reversal of the multiple-object conspiracy counts on the basis of *Yates*, as *Hubbard* was decided only after oral argument. Indeed, *Yates* was not discussed in the opinion.

Second, Respondent argues that the court's use of the term "other" (A-11) somehow "distinguish[es] the scope of the conduct included within the § 1001 object of the conspiracy counts from the § 1001 substantive counts." Op. Cert. at 6-7. This is frivolous. The language is merely used as a transition into a discussion of the remaining counts. The court could easily have used the term "last" or "next" without any change in the meaning of the sentence.

Finally, Counsel suggests that because the last paragraph of the manner and means (discussing concealment) is "60 paragraphs" prior to the overt act alleging concealments to the Senate Banking Committee, that a concealment other than to that Committee was alleged. Op. Cert. at 7-8.

The mere lack of proximity of the paragraphs speaks not to the agency alleged, but instead only to the length of the conspiracy charged. Additionally, the overt act dealing with the Senate Banking Committee had to be placed *after* the other overt acts in the conspiracy counts since the concealment related back to all the projects charged in that count (the previous overt acts) and chronologically occurred thereafter.

II. THE CUMULATIVE EFFECT OF THE PROSECUTOR'S MISCONDUCT DENIED PETITIONER HER CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

A prosecutor's conduct at trial must be fair and must not deprive a defendant of her right to due process and a fair trial. This case presents pronounced prosecutorial misconduct that persisted throughout the trial and culminated in an inflammatory closing argument. Pet. at 14-28. It presents the vehicle for this Court to define the proper latitude given a prosecutor during trial and closing argument.

A. The Prosecutor Expressed His Personal Opinion That The Petitioner Had Lied.

Petitioner does not contest that a prosecutor may comment that a defendant did not tell the truth when perjury is charged. Such comments, however, may not be excessive, must be tied to the perjury count, and must not effect the fairness of the trial. *United States v. Young*, 470 U.S. 1, 18-19 (1985). Here, the prosecutor stated at least thirty-one times[4] in closing argument (and eighteen times in rebuttal)

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[4] This number does not include the fifteen or more times the prosecutor used the words "lied," "lies," or "lying," when accusing Dean of falsely accusing other persons of lying or fabricating receipts. *See* A-108-109, 124-125.

that Petitioner had lied, an amount more excessive than any reported case located by Petitioner.[5] In addition, the prosecutor did not tie his statements to the perjury counts (Petitioner's testimony before Congress).[6] Many of the most inflammatory statements were broad assertions that were not directed at any particular piece of evidence. *See* Pet. at 14-19; A-80-144. The inflammatory statements were aimed at Petitioner's testimony at trial and crafted to "vouch" for the government witnesses.

The district court's "curative" instruction served to solidify in the juror's minds that it *was* the prosecutor's personal opinion that the Petitioner had lied and to exacerbate the effect of the prejudicial conduct. Pet. at 20-21.[7]

B. The Prosecutor's Use Of Perjured Testimony and False Evidence During the Trial Demonstrated A Reckless Disregard for the Truth.

Thomas T. Demery. Contrary to Respondent's assertions (Op. Cert. at 13), the fact that Demery committed perjury during the trial (with respect to whether he previously lied to Congress) is clear and unambiguous. A-

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[5] The cases cited by Independent Counsel are no exception. Op. Cert. at 11, *citing Young*, 470 U.S. at 19-20 (prosecutor's statement of his belief that respondent intended to commit a fraud, and statements regarding "honor and integrity", did not "undermine the fairness of the trial and contribute to a miscarriage of justice"); *Darden v. Wainwright*, 477 U.S. 168, 179 (1986) (Government's argument and use of the word "animal" did not "so (infect) the trial with unfairness as to make the resulting conviction a denial of due process").

[6] The trial court recognized that the prosecutor's statements were unrelated to the perjury counts. Pet. at 18 n.8.

[7] The other instructions Respondent referred to as "curative" (Op. Cert. at 12) are merely standard jury instructions.

165-66. Respondent cannot dispute that the prosecutor knew that Demery committed perjury when he testified at trial that he had not lied to Congress.[8]

Demery's testimony that Petitioner pressed the Dade County funding was a critical element in the government's case in support of Count III and the Kitchen gratuity count (Count IV).[9] The testimony was used to contradict Petitioner's testimony that it was Demery who brought the Dade County funding request to her attention (and she then wrote down *his* request),[10] that she consulted with Pierce about a conflict concerning Kitchen and that she was silent at the selection committee meeting when the project was discussed. A-169-78.[11] Certainly the jury would have been inclined to disbelieve Demery's testimony had it known that he twice lied to Congress while under oath.

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[8] The government charged Demery with two counts of perjury. Demery negotiated a plea agreement that did not include a perjury. The government agreed to this because a plea that included perjury could greatly damage Demery's credibility when he was called as a witness at Petitioner's trial. After his plea, Demery admitted he lied to Congress on two occasions -- Petitioner did not know that fact. Pet. at 22.

[9] Indicative of the importance the government placed on this testimony is the fact that the prosecutor chose to end with this evidence (last question of case-in-chief). A-167-68.

[10] The court of appeals stated that "Dean's handwritten note recorded precisely the number of units . . . and suggests that she and Kitchen conspired . . . " A-29-30.

[11] Former HUD general counsel, J. Michael Dorsey confirmed that it had been Demery who pushed the Dade County funding at the selection committee meeting and that he (Dorsey) did not remember Petitioner speaking about it. A-179-80.

Ronald L. Reynolds. Respondent downplays the significance of the Reynolds testimony[12] in an attempt to divert this Court's attention from the fact that the prosecutor knew that Reynolds would not be a truthful witness prior to putting him on the stand. See Pet. at 23. However, Reynolds testimony was very significant and certainly may have contributed to the verdict. Reynolds was called as a rebuttal witness to show that Petitioner had lied about her relationship to Mitchell. If this testimony was not significant, as Respondent contends, the prosecutor would not have relied on it so heavily in closing argument to attack Petitioner's credibility. *Id.*

The Sankin Receipts. Respondent failed to question Sankin before trial and about which receipts, if any, pertained to Petitioner before their introduction into evidence. Once the receipts were admitted into evidence, the burden inappropriately shifted to Petitioner to establish that they did not relate to her. Her efforts to do this then resulted in the prosecutor's ridicule in closing argument that she had falsely accused others of lying. A-108-09

Respondent does not deny that the prosecutor knew that some of the receipts did not pertain to the Petitioner and despite this knowledge, failed to inform the court[13] or defense counsel of these facts, relied on all of the receipts including the ones that Sankin specifically disavowed on cross examination -- 11q (A-163-64), 11v (A-161-62), and relied on all of the receipts in closing argument. Pet. at 24; Op. Cert. at 14.

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[12] Op. Cert. at 15.

[13] The district court acknowledged this misconduct. Pet. at 24, A-150-153.

Respondent's attempt to discount the significance of the prosecutor's misconduct ("virtually all the (12) receipts referenced Petitioner by name or by her HUD title") is without support. Op. Cert. at 14.[14] The court held that "*on the basis of Sankin's credit card receipts*, the jury could have concluded that . . . Sankin entertained Dean and discussed moderate rehabilitation funding or other Department matters with her on eight occasions." RA-20.

Witness Vouching. Respondent's statement that the prosecutor's assertion in closing argument that the Petitioner was "the only one we know who definitively did lie" is supported by evidence in the record is disingenuous. As discussed *supra*, the prosecutor was aware that Demery and Reynolds did not testify truthfully. Furthermore, there was no evidence whatsoever that Petitioner ever misled Secretary Pierce about "projects in which she had an interest." Op. Cert. at 16.[15]

Inciting Racial Prejudice. Respondent argues that the racially motivated comments identified by Petitioner were "taken out of context and misinterpreted," but does not indicate how or why. The argument also blatantly disregards

---

[14] Contrary to Respondent's assertion, four of the twelve receipts listed (Op. Cert. at 14) did not reference Petitioner or her title, but referred to a "staff assistant" (11n, 11o) or to a "HUD Asst to Sec." (11q) -- titles consistent with Sankin's girlfriend's position at HUD; or "Asst. Sec. of HUD" (11v) -- a title consistent with the position Silvio DeBartolemous had held. Of the eight remaining receipts, only one (11k) was consistent with the Petitioner's calendar.

[15] For lack of any supporting evidence, Respondent states: "There is evidence in the record from which a reasonable factfinder could conclude that petitioner misled the Secretary. For example, petitioner herself stated that Secretary Pierce was a fine man and a prominent attorney. One could reasonably infer from such evidence that Secretary Pierce would not have allowed his Executive Assistant to participate in decisions regarding projects in which she had an interest." *Id.*

the fact that the district court repeatedly chastised the prosecutor for making remarks while the defendant was on the stand in circumstances that *the court perceived as intended to incite racial hostility*. Pet. at 26-28.

* * *

Respondent suggests that the prosecutor's misconduct was isolated or unimportant and that it should therefore be disregarded. The prosecutor's closing argument, however, demonstrates just the opposite.[16] Here, the prosecutor repeatedly and virulently accused the Petitioner of lying and relied on perjured testimony (Demery and Reynolds) and false evidence (Sankin receipts). The prosecutor's actions forced Petitioner to deny what the prosecutor knew or had reason to know was false and to suffer his ridicule when he argued that her denial was a lie. The prosecutor's misconduct also had the effect of pitting the Petitioner against a number of witnesses so that the prosecutor could utilize the argument that "all of *these* people cannot be lying -- the defendant is."

The prosecutor's actions demonstrate the importance of this evidence to his case and his reckless disregard for the truth. His actions were intentional and were calculated to cause the jury to reach conclusions based on improper inferences, evidence and considerations. The cumulative effect of this misconduct violated Petitioner's constitutional right to due process and a fair trial.

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[16] It is well established that even if individual acts of prosecutorial misconduct do not rise to the level of reversible error, the cumulative effect can be so prejudicial that reversal is required. *See* Petition at 14, n.6 and authority cited therein.

Respectfully submitted,

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February 26, 1996

No. 95-942

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

DEBORAH GORE DEAN,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition For a Writ of Certiorari to the United States Court of Appeals For the District of Columbia Circuit

APPENDIX

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TRANSCRIPT

[Transcript 1217-1218]

[Tr. 1217]

* * *

BY MR. WEHNER:

Q Do you recall when Kelly Joyce graduated?

A No.

Q Do you recall that Kelly Joyce graduated on May 16 of 1987?

A No, although I must tell you I don't think that Deborah Dean was present there.

Q Do you recall taking Kelly Joyce to dinner the night of her graduation?

A No.

Q Are you aware that on that date Miss Dean was with your lawyer's partner, Plato Cacheris, with her aunt at a horse race?

A Why would I be aware?

Q Because you wrote on the list who receipt she was having dinner with you.

A Are you referring to this receipt?

[Tr. 1218]

Q Read it, please?

A It says dinner with Assistant Secretary of HUD. I don't believe that refers to Deborah Dean, as I just told you.

Q Who does that refer to?

A I think it more than likely refers to Silvio DeBartolomeis.

Q Was Kelly Joyce with you at that dinner?

A Sir, I don't remember.

* * *

[Transcript 1222-1223]

[Tr. 1222]

* * *

Q Now, I believe before the break you testified that -- you were talking about a receipt from the Georgetown Leather design. Isn't it true you never gave Deborah Gore Dean a gift from Georgetown Leather Design?

A Sir, I don't remember.

Q Isn't it true you gave it to Carter Bell?

A Sir, I don't remember.

Q And isn't it true that that's the reason you wrote it off because you felt it was somehow related to HUD?

A May I see the Exhibit, please?

MR. WEHNER: Sure.

THE COURT: It's Exhibit 11Q, I believe.

MR. WEHNER: Your organizational skills are far superior to mine, Judge. Just give me a second.

THE COURT: Is 11Q out there?

MR. WEHNER: Here it is.

A I can only say that I see nothing on here that would indicate I gave this to Deborah Dean.

[Tr. 1223]

Q Now, the question is did you give it to Deborah Dean?

A My answer is I don't think so.

THE COURT: Let me see that exhibit? Thank you.

There is some writing in the exhibit, right?

THE WITNESS: Yes, sir.

THE COURT: And that's in a different color ink than on the rest of the exhibits. What does it say?

THE WITNESS: It says HUD Assistant to Secretary.

THE COURT: Business gift.

THE WITNESS: Yes, sir, it says business gift, HUD Assistant Secretary.

BY MR. WEHNER:

Q Who do you believe you gave that to, Mr. Sankin?

A I don't know.

Q You didn't give that to Miss Dean, isn't that correct?

A I don't think so because the notation is not consistent with something I would have written that I gave to Miss Dean.

* * *

[Transcript 1916-1917]

[Tr. 1916]

* * *

Q. And did you swear to tell the truth?

A. Yes, I did.

Q. And did you tell the truth?

A. Yes, I did.

Q. You told the utter and complete truth in front of those -- on those hearings?

A. Yes, I did.

Q. Okay. You haven't been -- you didn't plead guilty to perjury, did you?

A. No, I did not.

Q. Okay. Is that because you've never committed perjury?

A. Of course.

Q. Okay. And you told the truth in front of the Lantos committee in the same fashion as you're telling the truth today correct?

A. Correct.

Q. I mean, you've been put under oath today, correct?

A. Yes.

Q. And you had the same obligation you have today as when you were in front of the Lantos committee? You recognize that?

A. Yes, I do. I know a lot more than I did before the Lantos committee. I've had an opportunity to look at documents and spend a lot more time on issues than I did when I testified in front of Chairman Lantos.

[Tr. 1917]

Q. Okay. So you may have made some mistakes in front of the Lantos committee, but they certainly wouldn't have been intentional; is that what you're saying?

A. Yes.

* * *

[Transcript 1939-1940]

[Tr. 1939]

Mr. Demery, do you recall the specific allocation of 203 units to a project in Dade County, Florida in the spring of 1987?

A I recall 203 units being allocated to Dade County, yes.

Q Did you know who the developers were in that project?

A No.

Q Did you know who the consultant was on that project?

A No.

Q Did you push for that project?

A Excuse me, at the time Ms. Dean and I were reviewing the funding applications from the PEA. As I said, as a part of the process each would let the other know any contacts that were made. It's very possible at that time I was told, I just don't remember.

Q Did you have anything to do with the funding of that project?

A In an official capacity, yes.

Q How about in an unofficial capacity?

A Well, I presented it to the committee, but I was not the initial contact on behalf of the PHA.

Q Who was, if you know?

A It was brought to my attention by Miss Dean.

[Tr. 1940]

MR. O'NEILL: I have no further questions. Thank you.

* * *

[Transcript 2572-2580]

[Tr. 2572]

* * *

A. Well, I didn't have any discussions until it was time to do the next round, and Mr. Demery came up to my office and wanted to discuss the projects that he was bringing forth to the meeting, I believe it was the following day.

Q. Did that meeting take place?

A. Yes.

Q. Okay. And who was present during the meeting?

A. Mr. Demery and myself.

Q. Anyone else?

A. No.

Q. Okay.

A. I mean, in the pre-meeting.

Q. Yes.

A. Mr. Demery came to see me, and I believe he told me he was also going to see Mr. Dorsey. I don't remember. I don't understand why we were having the meeting.

Q. Okay.

A. He came up. He wanted to talk about it. And I said, "Okay."

Q. Directing your attention to the actual meeting when these funding decisions were made, did that meeting take place?

A. Yes.

Q. Okay. And who was present at that meeting?

A. Mr. Dorsey, Mr. Demery, and myself.

[Tr. 2573]

Q. And this was the day following the day Mr. Demery came up to see you?

A. That is correct.

Q. Okay.

A. Meanwhile, I'd had a meeting with Secretary Pierce.

Q. Did you reach an understanding with Mr. Demery during the pre-meeting as to which projects he wanted funded and why?

A. He didn't discuss every one. He went down the list, and I wrote the list out as he was reading it to me, and I guess he was trying to see if there was going to be any discussion during the meeting. I mean, I think he wanted to sort of basically grease the meeting before the meeting.

So I wrote them down very hurriedly on a piece of paper and asked him some questions. He gave me some information, and I took that information to the secretary, and I then attended the meeting, I believe it was the following day.

Q. Did you have a discussion with Secretary Pierce regarding what was on the list?

A. I had a discussion with him about -- I gave him the list, but there were four projects that I wanted to discuss with him before they were funded.

Q. And did you discuss those with him?

A. Yes, I did.

Q. Which four were they?

A. Prince George's County; the Dade County, Florida, for 203;

[Tr. 2574] there is one for Wisconsin for, no, not 8, Brown County, Wisconsin, for 75; and one was for the Michigan State Housing Development Authority, which eventually was not funded but was on the list that Mr. Demery gave me.

Q. Did you discuss those with Secretary Pierce?

A. Yes. Mr., Mr. Demery had -- I wrote down the list, and I know that it's a government exhibit that they, I believe they have the list, and when we got to the ones where I had a problem or I felt I needed to talk to Secretary Pierce, I put a square around them to remind myself which ones they were, and so I -- and I had problems with those four.

* * *

BY MR. WEHNER:

Q. Ms. Dean, is this the list to which you've been referring?

A. Yes.

Q. Now this list was written by you --

A. Yes.

Q. -- as a result of a meeting with Mr. Demery?

[Tr. 2575]

A. Yes. He was reading them to me. He had a piece of paper in his hand, and he had some PRA letters, and he was reading the list to me.

Q. And you testified that you put a square around those for what purpose?

A. To discuss them with Secretary Pierce in detail.

Q. Okay. Why did you put a square around "Metro Dade, 203 units"?

A. Because Mr. Demery told me that Lou Kitchen was supporting that particular application and --

Q. Did you relate that to Secretary Pierce?

A. Yes, I did. I was very concerned.

Q. Why?

A. Because I was in the process of decorating Mr. Kitchen's apartment, and I didn't think I ought to be making a decision on something that he was supporting.

Q. And did you reach an understanding with the secretary as to whether that project should be funded?

A. He said that I should not --

MR. O'NEILL: Objection, Your Honor.

THE COURT: All right, I'll sustain it.

BY MR. WEHNER:

Q. What was your understanding based on your conversation with the secretary?

MR. O'NEILL: Objection, Your Honor.

[Tr. 2576]

THE COURT: All right, I'll sustain it. I think you're going to have to approach it a different way.

BY MR. WEHNER:

Q. Did you reach an understanding with the secretary regarding the funding of the Metro Dade project?

A. Yes.

Q. What was that understanding?

A. My understanding was that I was not to say a word about it during the meeting, not to vote on it.

Q. Directing your attention to P.G. County, is that your square around "P.G. County"?

A. Yes.

Q. What was your concern about P.G. County?

A. Well, Mr. Rick Shelby had come to see me several weeks or a month or so before this project, and he had -- I had known that he was involved in projects before, but he had never actively asked me to help him, and he came and said, "I would like your help in getting these 88 units for Prince George's County."

And Mr. Shelby was a friend of mine, and I had never had someone who I knew personally ask me for something like that before, and I remember telling him that I couldn't, I couldn't do anything except take it to the secretary.

I had taken it to the secretary, and the secretary -- I mean, I told him, I said, "Someone who I consider to be a personal friend, not a HUD friend, has come to me and asked me to [Tr. 2577] help him, and I felt very awkward about it."

He asked me who Mr. Shelby was, and I went through a long history of Mr. Shelby and who he was and everything else, and he said, "Well, if the project makes it --"

MR. O'NEILL: Objection, Judge. And I'm just put in the same position of objecting to everything.

THE COURT: I understand. Let's just go ahead with your own testimony, not what other people said to you.

THE WITNESS: I'm sorry. I'm sorry.

I said to the secretary that I was uneasy about it, and I was, I didn't do anything else about it. I didn't put it -- I didn't send it downstairs, I didn't do anything with it.

It came up from Mr. Demery, and I felt I had to raise it again with Secretary Pierce.

That and the fact that it was also in Prince George's County, which was in my home state of Maryland, and I always made it a matter of policy to discuss with Secretary Pierce anytime anything happened that was of a discretionary nature in Maryland, because I didn't feel that it ought to look like I was doing anything for my own home state, which was the same reason that I squared "MSHDA," because Michigan State Housing was Mr. Demery's home state, and I thought that Secretary Pierce ought to be aware that Mr. Demery was going to fund his own home state.

And I was given a different instruction on Prince George's County, and I was -- and my impression of what was said **[Tr. 2578]** to me was that just because I knew someone who was working on a project, I couldn't not consider the project, and that as far as the secretary was concerned, 88 units going to Prince George's County was perfectly fine, legitimate. I had brought my concern to him, he understood it, he didn't think there was anything wrong with it, and I should proceed with having that one on the list.

BY MR. WEHNER:

Q. You also squared "Wisconsin"?

A. Yeah. Michigan was the same thing. He felt that -- I'm sorry, my impression was that it was all right to leave Michigan on the list, that Mr. Demery couldn't just never send money to Michigan, because he was from Michigan, that my concerns about --his were a little more than Secretary Pierce thought were necessary.

And "Wisconsin" I squared because Mr. Demery told me that he had gotten a phone call from Senator

Proxmire, that Senator Proxmire had talked about it directly, and Senator Proxmire and Secretary Pierce were not on the best of terms, and I felt this was something that the secretary needed to know, that Mr. Demery was communicating with Mr. Proxmire personally and that also he was going to fund a project for Secretary Proxmire.

So those were the four that I squared.

Q. You relayed all this information to the secretary?

A. Yes, I did.

[Tr. 2579]

Q. You received instruction from the secretary as to how to proceed?

A. How I was to proceed in that meeting, yes.

Q. And did you follow those instructions?

A. To the letter.

Q. Now was there a subsequent meeting between you, Mr. Dorsey, and Mr. Demery?

A. Yes.

Q. Did you attend and participate in the meeting?

A. Yes, I did.

Q. Do you recall whether Mr. Dorsey raised questions regarding Metro Dade?

A. Yes. We had funded, as I said, in the earlier round 412 units for Metro Dade, and now there was another 350 on the, the next funding round, and Mr. Dorsey asked Mr. Demery if we weren't sending too many units to Metro Dade, and Mr. Demery said that no, he felt Metro Dade was in serious need of housing, which it is, and that there was nothing unusual about this number of units going down to that area. Mr. Dorsey said, "Fine."

Mr. Demery attempted to engage me in conversation about Dade County, Florida, and I said, "Unh-unh. I'm not talking." And I said, I said, "I have a reason not to vote on this."

Q. Did Mr. Demery and Mr. Dorsey agree to fund the projects, the four that you had mentioned to Secretary Pierce?

A. Yes. And there was a lively discussion on Houston as well, **[Tr. 2580]** 205 in Houston. Mr. Demery voted against that; Mr. Dorsey and voted for it. The, both, both Metro Dades were Mr. Dorsey and Mr. Demery, with my abstaining, although I didn't say I was abstaining. I just didn't say anything.

Prince George's County, I believe that there was actually some mention of Mr. Shelby during that, and I told everyone that I had spoken to the secretary about it and that it was up to them to vote for it, but that I had, I had at least said my piece about it to Secretary Pierce, that I thought he felt okay to go ahead and move on with that one.

And there was no discussion about Wisconsin, because didn't bother Secretary Pierce it was on the list, so there was no discussion about it. And there was some discussion about Sackets Harbor, New York, and Spring Valley, New York, because they were -- and maybe the

Puerto Rico ones as well. I think those were requests from Senator D'Amato. And I don't remember anything else about the rest of them.

* * *

[Transcript 3176-3177]

[Tr. 3176]

* * *

Q Directing your attention to the date of the early spring, or spring of 1987, do you recall being involved in the selection process for Moderate Rehabilitation units?

A Yes.

Q Do you recall sitting in a discussion with Mr. Tom Demery and Miss Deborah Gore Dean regarding Moderate Rehabilitation funding?

A Yes.

Q Directing your attention to that meeting, do you recall any discussion regarding a funding of 200 units to Metro-Dade Florida?

A I recall that there was an allocation of units to Metro-Dade and I asked Mr. Demery why we were funding Metro-Dade because as Assistant Secretary for Public Housing I was aware that there was a grand jury investigation of Metro-Dade Housing Authority and also that the Executive Director of this Housing Authority had been fired. Mr. Demery's response was that he had looked into this. He was aware of the problems that Metro-Dade had had, but he was also aware that they had an ability to do development or do development units and also that they had a great need because of refugees coming from Cuba and other parts of Latin America.

[Tr. 3177]

Q Do you recall Miss Dean saying anything about that allocation of units?

A I don't have any recollection of her saying anything, no.

* * *

[Transcript 3553]
(emphasis added)

* * *

Counts 1 through 3 charge that the defendant, Deborah Gore Dean, conspired to commit a substantive offense against the United States by agreeing to falsify and conceal material facts within the jurisdiction of a department or agency of the United States by means of trickery and deceit so as to conceal the manner in which the, in which HUD funding decisions were actually made. Additionally, Count 3 alleges the defendant agreed to demand, seek, or receive an illegal gratuity of $4,000 for and because of official acts performed and to be performed by her.

Later in these instructions, I will define the elements of the offense of falsifying and concealing material facts in a manner within the jurisdiction of a department or agency of the United States which, if proved beyond a reasonable doubt, constitutes a separate substantive crime. I will also define the elements of the offense of acceptance of an illegal public payment by a public official. I instruct you now that the elements of these offenses have the same meaning in this count as they do in the later counts.

* * *

[Transcript 3570-3575]
(emphasis added)

[Tr. 3570]

Now, Ladies and Gentlemen, we have a few more pages of instructions. I will give you the instructions on Counts 6, 8, **[Tr. 3571]** 10, 12, which is falsifying or concealing by trick or device, and then the final instructions on deliberations that govern your deliberations.

First, as to Counts 6, 8, 10, and 12, they charge the defendant, Deborah Gore Dean, knowingly and willfully falsified, concealed, or covered up by a trick, scheme, or device certain material facts that she had a duty to disclose concerning matters within the jurisdiction of the Senate Banking Committee, in violation of Title 18, United States Code, Section 1001.

Count 6 charges that on or about August 6, 1987, in connection with her testimony under oath before the Senate Banking Committee, defendant Deborah Gore Dean knowingly and willfully falsified, concealed, or covered up material facts that she had a duty to disclose concerning the manner in which HUD's mod rehab funding decisions were actually made and her role in those funding decisions; specifically, by testifying that HUD field offices rated and ranked mod rehab applications from public housing authorities and that a panel of HUD officials, of which the defendant, Deborah Gore Dean, was a member, would make mod rehab funding decisions based solely on information provided to the panel by HUD's assistant secretary of Housing.

Likewise, Count 8 charges that on or about August 6, 1987, Deborah Gore Dean knowingly and willfully falsified, concealed, or covered up material facts that she had a duty

to disclose by testifying before the Senate Banking Committee, that **[Tr. 3572]** she had never given or approved or pushed or coerced anyone to help any developer, and when she asserted that developers' meetings with HUD officials were a tremendous waste of time.

Count 10 charges on or about August 6, 1987, in connection with her testimony under oath, before the Senate Banking Committee, defendant Deborah Gore Dean knowingly and willfully falsified, concealed, or covered up material facts that she had a duty to disclose by willfully failing to disclose her knowledge of the HUD project known as Baltimore Uplift One.

And finally, Count 12 charges on or about August 6, 1987, defendant Deborah Gore Dean knowingly and willfully falsified, concealed, or covered up material facts from the Senate Banking Committee when she testified under oath before the Senate Banking Committee concerning her lack of knowledge of the award of mod rehab units to projects in the State of Maryland.

Now, Ladies and Gentlemen, as to the statute under which these charges arise, Section 1001 of Title 18 of the United States Code provides in relevant part that: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact . . . shall be guilty of an offense against the United States.

Elements of the offense. In order to establish that defendant Deborah Gore Dean is guilty of knowingly and willfully falsifying or concealing by trick or scheme a material fact that **[Tr. 3573]** she had a duty to disclose, as charged in Counts 6, 8, 10, and 12 of the indictment, the

government must prove each of the following elements beyond a reasonable doubt:

First, the defendant falsified or concealed or covered up a material fact;

Second, that she did so by trick, scheme, or device;

Third, that she acted knowingly and wilfully; and

Fourth, that the falsification, concealment or cover-up was with respect to a matter within the jurisdiction of a department or agency of the United States.

The first element that the government must prove beyond a reasonable doubt is the defendant, Deborah Gore Dean, falsified, concealed, or covered up a material fact. The Court has already determined that the government has established that the facts at issue in each of the Counts 6, 8, 10, and 12 were material. Therefore, you should not be concerned with this aspect of the first element of the offense.

The second element of the offense the government must prove beyond a reasonable doubt is that the defendant, Deborah Gore Dean, falsified or concealed or covered up by trick, scheme, or device. A scheme is a plan for the accomplishment of an objective. A trick or device is a deceptive act or strategy calculated to deceive persons.

To falsify means to make a statement that is untrue at the time it is made and that the person making the statement [Tr. 3574] knows to be untrue at the time it is made. To conceal means to withhold from another. It requires some act to prevent detection of some fact the defendant was required to reveal. To cover up means to hide from another.

Whether the defendant Deborah Gore Dean's behavior amounted to a trick, a scheme, or a device is a question for you as finders of the facts to decide. It is the government's burden with respect to this element to prove beyond a reasonable doubt that the defendant falsified or concealed or covered up a material fact by trick, scheme, or device.

The third element. If you decide the defendant, Deborah Gore Dean, did, in fact, falsify or cover up a material fact by trick, scheme, or device, as charged in each of Counts 6, 8, 10, and 12 of the indictment, you must then decide whether she acted knowingly and willfully.

An act is done knowingly if it is done purposely and voluntarily, as opposed to mistakenly or accidentally.

An act is done willfully if it's done with an intention to do something the law forbids, a bad purpose to disobey the law, or with specific intent to fail to do something the law requires to be done.

And as to the final element, the fourth element, you are instructed the material facts charged in Counts 6, 8, 10, and 12 are matters within the jurisdiction of the Senate Banking Committee and are thus matters within the jurisdiction of a **[Tr. 3575]** department or agency within the United States.

* * *

[Transcript 3577]

* * *

Now, Ladies and Gentlemen, I'm going to provide you, I am providing you with a copy of the instructions. During your deliberations, you may if you want to refer to these instructions. While you may refer to any particular portion of the instructions, you are to consider the instructions as a whole, and you may not follow some and ignore others. The fact that you have been provided a copy of my instructions should not discourage you from making an inquiry regarding the meaning of these instructions if necessary.

* * *